UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 15 Cr. 643 (PKC)

GARY HIRST,

Defendant.

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September 26, 2016
10:30 a.m.

Before:

HON. P. KEVIN CASTEL

District Judge
and a Jury

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
BY: BRIAN R. BLAIS
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BY: MICHAEL TREMONTE
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ALSO PRESENT:
SPECIAL AGENT SHANNON BIENIEK, FBI
ELLIE SHEINWALD, Paralegal
GARY SMITH, Paralegal
RYAN POLLOCK, Paralegal

(Trial resumed; jury not present)

THE COURT: It's 9:53. I have been on the bench for three or four minutes now. The defendant is present. The prosecution is present. Defense counsel is not present.

We will wait.

(Pause)

THE COURT: We have been waiting for you, Mr. Tremonte.

MR. TREMONTE: I am very sorry, your Honor. We got a little delayed just as we were a few blocks from the courthouse.

THE COURT: You can explain at a later time.

With regard to the letter of September 23 outlining the areas where the government moves in limine to preclude argument, is there any objection to the government's motion?

MR. TREMONTE: No objection in principle, your Honor.

THE COURT: So I grant the motion in limine and grant the relief sought to preclude you from arguing the existence of certain facts not in the record as outlined in the letter, arguing that Mr. Hirst was a scapegoat while the true criminals went unpunished, making arguments inconsistent with the parties' agreement concerning the number of telephone calls between defendant and Jason Galanis.

Mr. Tremonte, can you acknowledge receipt of the government's letter of September 25th regarding arguments in contravention or inconsistent with defendant's proffer statements?

MR. TREMONTE: Yes, your Honor. We received it.

THE COURT: And you're on notice that if you advance an argument inconsistent with the proffer statements of your client, I will entertain an application from the government to reopen their case to introduce such proffer statements.

You understand that?

MR. TREMONTE: We do understand.

THE COURT: Thank you.

Are our jurors here?

THE DEPUTY CLERK: No.

(Pause)

THE COURT: This is where we are. It's now 10:31 a.m. Juror No. 11 is not here. She lives in New York County. We have tried to reach her on the telephone and have been unable to do so. I am advised that she has been late on other occasions, but of course has been here. I am contemplating excusing her.

Any objection from the government?

MR. BLAIS: No, your Honor.

THE COURT: Any objection from the defendant?

MR. TREMONTE: No, your Honor.

THE COURT: The juror is excused.

Bring our jurors in.

(Continued on next page)

(Jury present)

THE COURT: Good morning, ladies and gentlemen. Please be seated.

We are here for our closing arguments. Juror No. 11 has been excused. So that's where we are.

As I told you, closing arguments are not evidence. They are an overview of what the lawyers on each side believe the evidence has shown or has not shown.

Also, as you know, the burden of proof is entirely on the government, and the defendant has no obligation to make a closing argument.

We will begin with the closing argument for the government, which will be delivered by assistant United States Attorney Brian Blais.

You may proceed, Mr. Blais.

MR. BLAIS: Thank you, your Honor.

Good morning, ladies and gentlemen.

(Audiotape played)

MR. BLAIS: You just heard the defendant's own words. You just heard Gary Hirst's words. "That whole, that whole Shahini thing, I mean nobody, they totally missed it, everybody."

On July 28, 2010, Jason Galanis called Gary Hirst, and you heard 20 seconds of conversation that tell you exactly what was in Gary Hirst's head in the summer of 2010. 20 seconds that show you that in July of 2010, Gary Hirst was squarely in the middle of a fraud. 20 seconds that, when combined with all of the other evidence in this case, the documents that you saw and the witnesses that you heard from, compel the only conclusion that is consistent with all of the evidence in this case, which is that Gary Hirst is guilty of all four counts against him.

They totally missed it. Gerova's lawyers, its auditors, even it's own CFO missed "that whole Shahini thing." Missed the fact that Gary Hirst had given away over 5 million Gerova shares, more than $70 million worth of shares in Ymer Shahini's name. Shares that Shahini had done nothing to earn, shares that were papered over using fake agreements in order to give them a veneer of legitimacy. Shares that were never disclosed in any of Gerova's public filings with the SEC. Shares that made the stock of every other Gerova shareholder less valuable. Shares that were ultimately sold for the benefit of Jason Galanis and his closest associates, including Gary Hirst.

And why did everybody miss "that whole Shahini thing"? Because Gary Hirst deliberately and purposely hid the Shahini shares from them. Because Gary Hirst waited months to give anyone the documents that supposedly justified giving away the Shahini shares. Why? Because he wanted to avoid getting caught. Because Gary Hirst wanted to cover up the multiple crimes he committed when he gave away $70 million of shares to Ymer Shahini. Because Gary Hirst was in the middle of a scheme to steal $70 million worth of stock from Gerova and betray the shareholders he was obligated to protect.

That's what the evidence in this case shows.

Now, ladies and gentlemen, I am here today to do two things. First, I am here to tie together the evidence that you have seen and heard over the last two weeks. In this trial, some of the evidence involved fairly complicated legal and financial documents, and I am going to break down some of that complexity and just show how the different pieces of the case fit together and how that evidence shows you what really happened here.

The second thing I would like to do today is to explain how the evidence in this case, in light of the instructions on the law that I expect Judge Castel will give you, shows that Gary Hirst is guilty of the crimes he is charged with.

Now, before I move on though, just a brief word about complexity. Complexity is a fraudster's best friend. Complexity was Gary Hirst's best friend. When transactions are complicated, when transactions are cloaked in dense legal and financial terms, it can make it very difficult to sort out what actually happened. It's tempting to just throw up your hands and say, this is all just too hard to figure out. That's what

Hirst was counting on, that no one would take the time and effort to connect the dots.

But we have done that. And at its heart, this case is not that complicated. This case is really about a straightforward plan by Hirst and his partners in crime to use something that Hirst controlled, Gerova stock, to line his pockets and the pockets of his friends and associates.

Now, let me start by telling you a few things that aren't in dispute in this case.

First, there really is no dispute that Gary Hirst was the president and chairman of Gerova in 2010, and those were serious jobs with serious responsibilities.

There is also really no dispute about how Gerova was formed. You heard that in January 2010, Gerova purchased a bunch of assets, including assets from two hedge funds, Stillwater and Weston.

And there is also no dispute that on May 26, 2010, Gary Hirst directed Continental Stock Transfer, Gerova's transfer agent, to issue over 5.3 million shares of Gerova stock to Ymer Shahini. You saw Hirst's instruction letter to Continental directing that the shares be sent to Shahini's account on May 27, 2010.

And there is no real dispute that the closing price of Gerova on May 27, 2010 was $13.56, and that as a result, Shahini's shares were worth over $72 million on the day they were issued.

And there is no dispute that Shahini was issued shares under something called Regulation S. You heard from Professor Laby towards the start of this trial that a company can issue unrestricted shares under Regulation S to a foreigner so long as those shares are not resold in the United States or to a United States person for a period of time.

So what is really in dispute in this case? What really are the issues that you as a jury are being called upon to decide? There really are two major things in dispute.

First, was Hirst's authorization of over 5.3 million shares of Gerova to Shahini part of a fraudulent scheme? And, second, did Gary Hirst knowingly become part of that fraudulent scheme and participate in it with the intent to defraud others?

The evidence in this case, which I am about to walk through, shows you that the answer to both of these questions is a resounding yes.

The issuance of the shares to Shahini was part of a scheme to take advantage of Gerova's high stock price in order to get fast money into the pockets of Hirst, Jason Galanis, and their cronies. And Hirst knew exactly what was going on when he issued tens of millions of dollars of shares to Shahini.

So issue one. Were the Shahini shares part of a fraudulent scheme? The answer is obviously yes.

In May 2010, Jason Galanis and Gary Hirst had both a problem and an opportunity. On the one hand, Gerova's stock had gone from just over $6.00 at the end of April to over $15.00 just a few weeks later. There was lots of money to be made. The problem was, even though Hirst and Galanis had lots of stock in Gerova, they couldn't sell it. All of the shares they owned were restricted; they couldn't be sold.

So Hirst and Galanis wanted to issue unrestricted shares to themselves and their friends so they could take advantage of Gerova's high stock price. But they knew they couldn't just issue unrestricted shares to themselves; those shares would have to be registered with the SEC. But Hirst and Galanis knew that Gerova could issue unrestricted shares to a foreigner under Regulation S, and that's exactly what they did. And that foreigner had to be somebody that they controlled so that they could direct when the shares were sold and take the proceeds of those sales for themselves.

And that's where Ymer Shahini comes in. Shahini was the foreigner that Hirst and Galanis needed to take advantage of Gerova's rapidly increasing stock price.

In less than a week, between May 21, 2010 and May 27, 2010, Derek Galanis, Jason's brother, brought Shahini into the scheme. The plan to take advantage of Gerova's high stock price was set in motion and by the end of that week-long period, Shahini had $72 million of Gerova shares in his pocket.

But Hirst and the Galanises had to come up with a cover story to explain why Shahini was given $72 million of Gerova shares on May 27, 2010. Without paperwork to support the Shahini shares, the illegal share giveaway could have easily been sniffed out if anyone -- the SEC, the New York Stock Exchange, Gerova's lawyers or auditors -- had asked why Shahini got $72 million of stock. An undocumented stock transaction would have quickly put Hirst and Galanis in hot water.

So Hirst and Galanis and the other co-conspirators had to come up with a cover story, designed to make it look like Shahini deserved the millions of shares he received.

What was that cover story that they came up with? The cover story had multiple steps.

Step one, sign a fake consulting agreement with Shahini that claimed he was owed a $2 million fee for introducing Weston to Gerova.

Step two, sign a fake warrant agreement with Shahini that claimed he took warrants instead of his cash fee.

Step three, after the stock price of Gerova had gone way up, claim that Shahini had exercised his warrants to receive shares worth millions of dollars.

Ladies and gentlemen, the cover story to hide the fact that Shahini did nothing to deserve those $72 million of shares from Gerova ultimately didn't work. That's why we are here today.

Let me be very clear about something. The Shahini consulting agreement and the Shahini warrant agreement that we have spent a lot of time talking about in this trial are fake. They are part of the fraud. They are the key elements of the cover story designed to deceive everyone outside of the conspiracy into believing that Shahini deserved those shares.

So let's talk about how the evidence shows that the Shahini agreements were fake. Let's focus on the consulting agreement first. Four reasons that the evidence shows this agreement is a fraud.

First, the fact that Shahini did no actual consulting work for Gerova. Did nothing to actually earn a fee;

Second, the timing of the e-mails to Shahini about his role in the scheme;

Third, the conspicuous absence of the Shahini consulting agreement from other Gerova paperwork; and

Fourth, evidence that the co-conspirators routinely backdated other documents.

I will talk about each of these in turn. Let's focus on the first.

First, the Shahini consulting agreement is a fraud because Shahini did no actual consulting work for Gerova.

The consulting agreement says that Shahini is owed a fee for introducing Weston to Gerova. That's just plain false. It's a lie. Shahini did not introduce Weston to Gerova.

How do you know that? One, Albert Hallac told you so. And he would know. He was the head of Weston, the person at the heart of the Weston Gerova deal. And Hallac told you that he didn't need any introduction to Gerova because Joe Bianco had already introduced him to Galanis back in 2008. Not Ymer Shahini. Hallac had never even heard of Ymer Shahini.

And Hallac's testimony is backed up by other evidence in this case. Take a look at Government Exhibit 589. This is the January 28, 2011 letter to the New York Stock Exchange that Gerova sent after the NYSE started asking questions about Jason Galanis's role at Gerova. Signed by Gary Hirst. And that document says: Joseph J. Bianco introduced to the company the opportunity to acquire the assets of the Wimbledon funds. And you will recall Wimbledon was just the name of the Weston funds that were made part of Gerova.

Joe Bianco made the Weston introduction, not Ymer Shahini, not Jason Galanis. Joe Bianco. Just like Albert Hallac told you.

So it's clear from the evidence in this case that Shahini did not perform the services reflected in the consulting agreement. He didn't introduce Weston to Gerova. And Gary Hirst knew that because he signed a letter to the New York Stock Exchange that said exactly that.

Government Exhibit 1024 also shows you that Shahini didn't do consulting work for Gerova. This is a June 28, 2010 e-mail to Ymer Shahini with the subject line "information on acquisition you brought," followed by a paragraph about Weston.

Ladies and gentlemen, why is somebody in the Galanis family sending Shahini basic information about Weston in June of 2010 when Shahini supposedly signed a consulting agreement and earned a fee for his introduction of Weston in January of 2010? Because the consulting agreement didn't exist in January 2010.

Government Exhibit 1024 shows you that Shahini needed to learn a cover story about why he was getting so many shares. And that's reason number one that you know the Shahini consulting agreement was false.

The second reason you know the Shahini consulting agreement is fake is the timing and content of the e-mails to Shahini about the scheme. The timing of Shahini's recruitment is totally inconsistent with the date on the consulting agreement.

Take a look at Government Exhibit 1003, which is an e-mail from Derek Galanis to Shahini on May 21, 2010. Subject line: "A deal awaits. We should talk, my friend."

Then another e-mail the very next day, May 22, Government Exhibit 1004, with the subject line, "It's a huge deal with huge cash flow. All we need is a foreign national, which is where you come in my friend."

Derek Galanis understands that with a foreigner on board the conspirators can get unrestricted Gerova shares authorized by Hirst into their hands and then generate huge cash flow, which is exactly what happened.

Shahini solved a big problem for Hirst and the Galanises because unrestricted shares could get in Shahini's hands quickly, via Regulation S, without the time, money and effort in filing a registration statement, which is what is generally required for a company to issue unrestricted shares.

Now take a look at Government Exhibit 1012. Again, an e-mail from Derek to Shahini. This one on May 26, attaching a letter for Shahini to sign. And that letter is a letter to Barry Feiner, dated May 26, and states that Shahini will comply with Regulation S.

Again, the reason that Hirst and the Galanises need Shahini is because Shahini can get shares through Regulation S that are not restricted.

Let's focus on Government Exhibit 1014. May 27, the day Shahini gets his shares.

Starting at the bottom, Shahini writes to Derek, "I forgot to mention, according to this, I'm rich."

Derek replies, "If we do this just right, we all may be."

Derek replies again, "If we do this wrong, well, let's not think about it."

Ladies and gentlemen, here is the fraudulent scheme laid bare in a single e-mail. If the scheme is carried out right, everyone gets rich. If not, well, let's not think about it.

So between May 21 and May 27, 2010, Shahini is recruited into the scheme and, lo and behold, six days after Derek first e-mails him, Shahini ends up with more than 5.3 million unrestricted shares of Gerova authorized by Hirst.

Shahini was right when he said in Government Exhibit 1014 that he was rich. Over night he had suddenly acquired $72 million of Gerova shares given to him by Hirst.

So the second reason the evidence shows that the Shahini consulting agreement is fake is that Shahini didn't even become part of the scheme until May, five months after the consulting agreement was supposedly signed.

Now, the third way that you know the Shahini consulting agreement is fake and didn't actually exist in January 2010 is its notable absence from other Gerova paperwork.

Let's focus on Government Exhibit 554, which is Gerova's response to an inquiry from the New York Stock Exchange that asks for information about a number of things, including consulting agreements that Gerova had entered into.

This letter is dated April 23, 2010 and signed by Gary Hirst. Which consulting agreement is not here? Which agreement is left out? The Shahini consulting agreement, which was supposedly entered into on January 22, 2010.

Why was the Shahini consulting agreement not listed in the letter to the New York Stock Exchange? Because it was created after the shares were issued by Hirst to create the illusion that those shares were legitimate. The Shahini consulting agreement didn't exist on April 23, 2010 when the NYSE letter was sent. That's why it's not in the letter.

That's the third reason you know that the Shahini consulting agreement is a sham. It doesn't show up in places where you would expect it to.

The fourth reason, ladies and gentlemen, is that you have seen other examples of documents that were backdated in this case, documents that were signed well after the date that appears on the face of the document. And this evidence shows you that backdating was one of the ways that Gary Hirst and his co-conspirators carried out this scheme.

Take a look at Government Exhibit 1089, which shows Derek e-mailing Shahini on June 18, 2010 with the message, "Do me a favor and sign and fax this back to Jared below. It will give him comfort as a lawyer."

Shahini then signs the document and e-mails it back to Derek. And Shahini's signature is right under the date that reads May 25, 2010. But Shahini didn't even get this document until June 18, 2010. He didn't sign it on May 25. He signed it on June 18, weeks after the date on the document. Just like the consulting agreement.

Ladies and gentlemen, the evidence in this case shows you exactly when the Shahini consulting agreement was signed. It wasn't January of 2010. It wasn't March of 2010. It was June of 2010. June, not January. After Shahini was recruited into the scheme, which of course makes sense.

How do you know that? Take a look at Government Exhibit 1090. This is an e-mail from J. Galanis to Shahini dated June 25, 2010. "Can you be in Los Angeles on Monday? Important."

That e-mail was sent on Friday, June 25. Monday was three days later, June 28. Why did Shahini need to fly from Europe to Los Angeles on three days' notice? Ladies and gentlemen, the answer is clear. He needed to go to Los Angeles to sign the fake documents that provided the cover story.

How do you know that? Take a look at Government Exhibit 1091. Here is an e-mail from June 29, the day after Shahini was supposed to come to Los Angeles. There is an attachment to this e-mail called Shahini Consulting Agreement Final. What is interesting about that attachment? It's only signed by Shahini.

Why would Derek and Jared Galanis be sending around supposedly final copies of the Shahini consulting agreement, copies that had been supposedly signed five months before, that only had one signature? Because that signature had been put on the day before when Shahini was in Los Angeles for the very purpose of signing this document.

Ladies and gentlemen, these small details tell a big story in this case. Hirst cannot escape the paper trail that he and his co-conspirators left behind.

So I have just reviewed you with the many ways that the consulting agreement was a sham, and the evidence at trial makes clear in at least three ways that the warrant agreement was also fraudulent.

First, again, the timing of the recruitment of Shahini.

Second, evidence that Shahini was not sitting on large number of unexercised warrants.

Third, Shahini let other conspirators control shares and money that were supposedly his.

So let's focus on the first reason you know that the Shahini warrant agreement is fake.

The e-mails between Ymer Shahini and other members of the conspiracy make this plain. Let's focus on Government Exhibit 1004. On May 22nd, Derek says, "All we need is a foreign national we trust, which is where you come in, my friend."

If Shahini had been sitting on 11 million Gerova warrants since March 29, 2010, the date on the warrant agreement, wouldn't Derek's message been very different?

Wouldn't it have said something like, hey, buddy, now might be good time to exercise all the warrants you have been sitting on.

The May 22nd e-mail cannot be squared with the March 29th date on the warrant agreement. If Shahini had been in possession of the warrants since March, Derek's e-mail to Shahini wouldn't be saying, I've got a deal for you. They would be saying, Cash your warrants in now.

The e-mails don't say that because Shahini didn't have any warrants in May. That's the first reason you know the warrant agreement is a sham.

Now, the second reason that you know the warrant agreement is fake is that if Shahini had been sitting on a pile of warrants since March, then Government Exhibit 1014 makes no sense. If Shahini was exercising legitimate warrants he had been sitting on for a while, then Derek's statements, if we do it wrong, let's not think about it, makes no sense either. If everything is legitimate, what exactly was Derek worried about?

There was only something for Derek to worry about if the transaction wasn't legitimate. The fact that Derek said, if we do it wrong, let's not think about it, shows you that he and Shahini knew that they weren't just exercising legitimate warrants. They knew they were doing something wrong. They were worried about getting caught.

Finally, the fact that Shahini essentially let members of the Galanis family control the sale of his shares shows that he was not legitimately entitled to them. If the shares were truly his, if he had actually lucked into $72 million worth of Gerova shares through the exercise of legitimate warrants, why would they give away most of the profit from the sale of those shares to the Galanises?

The reason he did that is because the shares were never his in the first place. He was just holding them for a fee for the Galanis family. Shahini's shares, the shares given away by Hirst, were ultimately controlled by Jason Galanis and his family.

You saw the evidence that makes this clear. Take a look at Government Exhibit 1063. Here Derek Galanis e-mails Shahini and says, "I recommended you for this job, Ymer. It is my ass on the line."

Shahini was just doing a job by loaning his name and identity to the fraud scheme. He didn't actually earn those shares.

Now, all of this evidence makes clear that Shahini didn't get his $72 million of shares by exercising warrants. The consulting agreement and warrant agreement were made up, after the fact, to provide a phony justification for why Shahini got such a huge quantity of shares and to hide that the shares were ultimately controlled by Hirst, Galanis and their associates.

Now, one other interesting thing about the warrant agreement cover story. You know that Shahini got 5,333,333 shares on May 27, 2010. Ladies and gentlemen, where have you heard that number before?

Let's look back at Government Exhibit 640. When Marshall Manley became the CEO of Gerova in 2010, he signed an agreement that allowed him to purchase 5,333,333 shares of Gerova. And when Manley was fired by Gerova's board in April 2010, Gerova agreed to buy back Manley's 5,333,333 shares.

And what happened to those shares? Let's look at Government Exhibit 504. On June 1, 2010, Hirst instructed Continental to cancel Manley's shares, effective May 27.

Ladies and gentlemen, what else of significance happened on May 27? You know the answer. Gary Hirst instructed Continental to issue the exact same number of shares to Ymer Shahini. Over 5.3 million shares in from Manley and over 5.3 million shares out to Shahini. On the exact same day.

Now, let's focus on that coincidence for just a minute. You know that the fake warrant agreement signed by Hirst has a complicated formula for determining the number of shares to be issued when the warrants were exercised. You heard from Michael Hlavsa that the number of shares to be issued depended on a number of things, including the stock price of Gerova for the three days before the exercise, the strike price of the warrants, and the number of warrants being exercised.

Ladies and gentlemen, what are the chances, what is the likelihood that all of those numbers together would just so happen to produce a result that was the exact same number, the exact same number of shares that Manley was turning in? Of all the numbers in the world, how unlikely is it that a complicated calculation that depends on so many different numbers would just happen to equal 5,333,333?

What are the chances that I will get struck by lightning while talking to you here this morning? It is so improbable, so unlikely, so impossible that a legitimate exercise of warrants would produce a share count that exactly matches the number of shares that Manley was turning in that you can safely conclude there has been a directed effort to get to that specific result. In fact, you saw exactly that. There was a directed effort to get to a specific share number.

Let's turn to Government Exhibit 601. This is the document that calculated the number of shares that Shahini was supposed to receive. And Hlavsa got this document from Hirst via Skype. And he also told Hlavsa that Shant Chalian, one of Gerova's lawyers, had done this calculation. And you know that's a lie because Shant Chalian told you he didn't do these calculations. The evidence is clear that this document was manipulated in order to get the end result the conspirators wanted, which is that the final calculation yield the exact number of shares being turned in by Manley.

Let's look at the way this calculation was manipulated. First, the share price for Gerova for May 19 is just plain wrong the stock price for Gerova on May 19 wasn't $15.11, it was $15.31.

Second problem, the strike price of Shahini's warrants was $7.50. Yet on Government Exhibit 601 the strike price is set to $7.00.

Finally, Shahini exercises only 10 million warrants, even though he supposedly had 11 million. Yet instead of taking all of his gains, instead of taking all of his money off the table, Shahini supposedly only exercises 10 million warrants.

What is the consequence of all of this manipulation? What is the net result? The result is that the number of shares Shahini gets totals exactly 5,333,333.

Ladies and gentlemen, why did this calculation use the wrong stock price, the wrong exercise price, the wrong number of warrants? Because Hirst and the other conspirators wanted to get to exactly 5,333,333 shares. Because they wanted the number of shares coming in from Manley to exactly equal the number of shares going out to Shahini.

It's much easier to hide the theft of a huge number of shares when it exactly matches a huge number of shares that are coming back in to the company. The number of shares outstanding don't change, the number of shares reported to the public doesn't change, and it's easier to bury the crime, which is exactly what Hirst and Galanis wanted, to hide their scheme to gift stock to themselves from the investing public.

Finally, one other quick thing about the warrant agreement. You learned that the metadata through one version of the warrant agreement showed a create date of April 9, 2010. Ladies and gentlemen, it makes no sense that the warrant agreement was created on April 9. I just walked through all of the evidence that shows that Shahini was not even recruited into the scheme until May.

If he wasn't involved until May, how could he have signed the warrant agreement in March or April. The answer is that he did not sign the warrant agreement in April because he wasn't even part of the scheme then. The April 9 create date is just inconsistent with all of the other evidence in this case about when the warrant agreement was signed.

So why does this document have an April 9 create date? Because Hirst manipulated the create date. Let's look at Government Exhibit 600A.

When Hlavsa asked Hirst for the documents supporting the exercise of the Shahini warrants, Hirst asked for a few days to gather the documents. Why? Because he needs to make sure the documents he is going to send to Hlavsa support the cover story. You heard that create dates are so easy to change that the FBI doesn't rely on them alone to determine the date that a document was actually created.

This is just another example of how Hirst and the other members of this conspiracy had planted their cover story and tried to cover their tracks while they were committing their crime.

So, ladies and gentlemen, the evidence, including e-mails recruiting Shahini into the scheme, the total lack of any consulting work done by Shahini, the spectacular coincidence that the number of Manley shares exactly equals the number of Shahini shares going out, and Shahini's total surrender of control over his shares makes clear that the Shahini shares were issued as part of a fraudulent scheme.

Now, I said earlier that there were two significant issues in dispute at this trial. We just talked about the first one, whether the giveaway of shares to Shahini was part of a fraudulent scheme. And the answer to that question is yes. The second issue in dispute is whether Hirst knowingly became part of the fraudulent scheme to issue shares to Shahini? And the evidence tells you that the answer to that question is also a resounding yes.

The answer is yes for at least five reasons.

First, Hirst signed a warrant agreement well after the date on the face of the document.

Second, Hirst ordered the issuance of Shahini shares and the cancellation of Manley shares within days of each other.

Third, Hirst made sure that the stock give away to Shahini was left out of Gerova's public filings and hidden from everyone outside of the conspiracy.

Fourth, Gary Hirst's own words in the recording that you heard show that you that he knew about the fraudulent nature of the Shahini shares.

Fifth, once Michael Hlavsa and other people outside of the conspiracy discovered the stock giveaway, the cover story that was crafted to explain the Shahini shares started changing, and it changed multiple times.

So let's focus on the first way that you know that Gary Hirst had knowledge of the fraudulent scheme, the fact that Hirst signed a backdated warrant agreement.

Gary Hirst signed the fake Shahini warrant at the earliest in May of 2010. The warrant agreement has a date on it of March 29, 2010. For all of the reasons I just went through, you know that the warrant agreement could not have been signed by Hirst on that date. It could not have been signed by Hirst before May because Shahini wasn't recruited into the scheme until May.

Hirst knew when he was signing the warrant agreement that he was signing it months after the date on the actual document. He was purposely backdating the warrant agreement as part of the fraudulent scheme.

Now, the second way that you know Hirst intentionally participated in the fraud, Hirst gave the order to issue Shahini's shares and the corresponding order to cancel Manley's shares. Hirst did that by issuing two letters to Continental, Government Exhibit 500 issuing the Shahini shares, and Government Exhibit 504 canceling the Manley shares.

Hirst clearly knew and was aware that over 5.3 million shares were both coming into and going out of Gerova at the very same time because he is the one that made both of those things happen.

Now, number three, Hirst made sure that Gerova's filings with the SEC covered up the 5 million shares he had stolen from the company. You heard from Michael Hlavsa that Gerova's 20-F, its annual report, was filed on June 2, 2010. Hlavsa told you that Gerova was required to include in the 20-F any material events that occurred before the filing date.

Now, I expect that Judge Castel will instruct you that a material fact is one that a reasonable person would have considered important when making an investment decision. Was the issuance of shares to Shahini a material event? Would a reasonable person have wanted to know that Gerova had given away $72 million of free trading shares to someone as part of a consulting arrangement?

Of course it was material. Gerova had issued over 5.3

million of free trading, unrestricted shares to someone as part of a supposed consulting agreement. That happened at a time when most of the shares of Gerova were restricted and couldn't be sold. A Gerova shareholder would have wanted to know that every share he or she owned had been made less valuable by the millions of shares given to Shahini.

So of course that's important information. That's information that's material. And of course the fact that the Shahini share giveaway should have been included in Gerova's 20-F.

Now, why weren't those shares included in Gerova's 20-F? Because Hirst didn't tell Hlavsa about them. He wanted those shares hidden. He didn't want anyone outside of the scheme to know anything about them.

You heard Hlavsa testify that when Gerova's 20-F was filed on June 2, 2010, it didn't have any finder's fee associated with the Weston transaction.

Now, let's pause for a second and situate ourselves in time because dates matter here.

You know that Shahini received over 5.3 million shares authorized by Hirst on May 27, 2010. The 20-F is filed on June 2, six days later. One thing is clear, ladies and gentlemen, is that at the time the 20-F was filed, Gary Hirst knew that the Shahini shares had been issued because he was the one who issued them.

Given how close Gerova was close to filing the 20-F at the time the Shahini shares were issued, isn't it odd that Hirst told Hlavsa nothing about those shares? Isn't it strange that Hirst didn't say, Hey, Michael, there's something big that just happened that you should know about before you file the 20-F. I just gave away $72 million worth of stock. Is that important?

But Hirst didn't say that. Hirst didn't tell Hlavsa anything about the Shahini shares before the 20-F was filed. Why didn't he tell Hlavsa? Because Hirst had to make sure that Gerova's filings with the SEC covered up the 5 million shares he had just stolen from the company. That was the only way for the scheme to succeed. And Gary Hirst knew that.

In fact, after the 20-F was filed, Hirst sent a series of e-mails to Hlavsa in which he continues to deceive Hlavsa about the Shahini shares.

Let's look at Government Exhibit 613, which is an e-mail from June 13, 2010, about ten days after the 20-F had already been filed.

Hirst asks Hlavsa, "I just want to make sure that the 23 and a half million includes the finder's fee for the Wimbledon transaction. Probably does, but want to be sure."

Again, let's situate ourselves in time. June 13 is after May 27. Hirst knows that on May 27 he issued $72 million of shares to Ymer Shahini to supposedly settle the finder's fee. How could the 23 and a half million dollar transaction cost figured in the 20-F include $72 million worth of stock? It couldn't of course. And Gary Hirst knew that.

So why does Gary Hirst bring up the finder's fee at all? Because Hirst and his co-conspirators have to start bleeding out the cover story piece by piece. Sooner or later someone was going to catch on to the fact that these shares had been supplied to Ymer Shahini. Once the fake consulting and warrant agreement had been concocted, there was an explanation for Shahini shares at the ready and it was time for Hirst to start bleeding out that explanation. This e-mail shows you how sophisticated, how well thought out this scheme really was.

Let's look at what happens next. Government Exhibit 614, the next day, June 14, 2010. Hlavsa responds to Hirst and tells him, "There is no fee for Weston included in the 20-F. I would need the agreement."

And you know what happens next. Hlavsa is here in New York working on the 20-F at Hodgson Russ's offices. And Steve Weiss, Gerova's outside corporate counsel, gives a copy of the Shahini consulting agreement to Hlavsa and says, Gary wanted you to have this. The cover story is starting to bleed out, but only in bits and pieces.

And you know that Hlavsa gets the consulting agreement around June 15, 2010 because that's the day he sends it to Joe Puglisi, who was Gerova's outside auditor, and to Ken Riscica, who was Gerova's outside financial consultant. You saw that on Government Exhibit 604.

The interesting thing about the consulting agreement that was attached to Government Exhibit 604 it was unsigned. Why does that matter? Focus on the dates again. I have already walked through the evidence that makes clear that Shahini signed the consulting agreement in Los Angeles on June 28. So obviously the version of the consulting agreement that Hlavsa was handed at Hodgson Russ's office in mid-June had to have been unsigned because Hlavsa received it before Shahini came to Los Angeles to sign it. June 15, before June 28.

In fact, that's exactly what you see in the attachment to Government Exhibit 604. It is unsigned. There was no signed version of the consulting agreement to be given to Hlavsa in mid-June because it didn't exist yet.

Now, you have heard Hlavsa testify that after he got the consulting agreement from Steve Weiss he called Hirst to ask whether the Shahini consulting agreement was legitimate. And Hirst lied and assured him that it was. Hirst also lied and assured Hlavsa that Shahini had performed the services in the consulting agreement, which is preposterous for all the reasons we have talked about.

To top it off, ladies and gentlemen, what absolutely critical information did Hirst fail to sell Hlavsa during that conversation? He didn't say a thing about the warrant agreement. He didn't say a thing about the 5.3 million shares that had already been given out. Hirst deliberately kept Hlavsa in the dark about that. Because to do otherwise would have exposed their scheme. So Gary Hirst hid the shares to make sure the scheme was successful.

And you know that Hirst hid the Shahini shares from Hlavsa for another three months. Hlavsa didn't find out about the Shahini shares until he stumbled across them by happenstance. He discovered them himself by accident.

You heard Hlavsa tell you that in late September 2010, he requested a transactional share list from Continental when he was reconciling numbers for Gerova's financial statements. And when he got that document, what did he see? Something that looked like Government Exhibit 508, a document that showed the issuance of over 5.3 million shares, the shares that had been handed to Ymer Shahini almost four months before that.

The man who was responsible for ensuring that Gerova's books and records were accurate, that its filings with the SEC correctly reflected Gerova's true financial state, did not find out about the issuance of more than 5 million shares of Gerova for four whole months. And he didn't find out because Gary Hirst deliberately hid it from him.

Now, you heard about Hlavsa's reaction to finding out about these shares. Hlavsa was shocked that no one from Gerova's financial team had been involved with these calculations. He also testified that if he had known about the Shahini share issuance at the time of the 20-F he would have included that share issuance in the 20-F. Why? It would be very material to the company and the reader of that document should know that the transaction had occurred.

Ladies and gentlemen, let's focus for a minute on what happened here. The president of a public company, a company whose shares traded on the New York Stock Exchange hid material and important information from the chief financial officer of that company. The president of Gerova, Gary Hirst, did not tell his own CFO that he had issued over 5.3 million shares of stock on his own without the approval of Gerova's board.

And you know who else didn't know? Gerova's shareholders, the investors in Gerova. The people whose investments were impacted by the information available in the market about Gerova. The people who never learn about the existence of Ymer Shahini and the fact that he had been given tens of millions of dollars of shares in Gerova. The people who were defrauded by Gary Hirst and his friends.

You know who else was in the dark? Gerova's lawyers. On September 28, 2010, after Hlavsa had received the Shahini warrant agreement from Hirst, Hlavsa sent it by e-mail to Steve Weiss, who you heard was Gerova's outside corporate counsel. And you saw that on Government Exhibit 509. What was Weiss's reaction? Did he say, Thanks, Michael, I have already had these documents for awhile? No. He forwarded the documents by e-mail to his law partner, Shant Chalian, along with the question, Do you know anything about this?

The company's own lawyers were kept in the dark by Gary Hirst. This wasn't just a slip-up by Hirst, an accident where Hirst forgot to mention a important piece of news to a colleague. No, ladies and gentlemen. It was a deliberate effort by Hirst to keep everyone outside of the conspiracy in the dark. To keep the Shahini shares hidden until they couldn't be hidden any longer.

So that's the third way that you know that Gary Hirst knew about the fraudulent nature of the Shahini shares. He kept the shares a secret and made sure that no one, not the CFO, not Gerova's shareholders, not their lawyers, not the investing public, knew anything about them.

Now, how else do you know that Gary Hirst knowingly participated in the scheme? The recording, the July 28, 2010 recorded conversation between Gary Hirst and Jason Galanis.

Before I talk about the recording, let me remind you what was happening in July. By July, Hlavsa had been given the fake Shahini consulting agreement by Hirst but Hlavsa had still not received the fake warrant agreement and still did not know about the Shahini shares.

Now, Hlavsa told you after the 20-F was filed Gerova began working on another SEC filing, a registration statement that was called a F-1. And the purpose of that document was to register the unrestricted Gerova shares held by Stillwater and Weston investors. This document never actually got filed by the SEC, but you did see a number of drafts of this document during the trial.

Look at Government Exhibit 612. Eric Pinero of Hodgson Russ sends what he calls the substantially final version of the F-1 to various people at Gerova, including Gary Hirst. And there is a thick 112-page document attached to Pinero's e-mail, which is the draft registration statement.

What two words do not appear anywhere in that document? "Ymer" and "Shahini." There is no disclosure in that document about the shares that had been issued to Shahini. No description of the consulting agreement or the warrant agreement or Shahini's exercise of the warrants. Nothing that would have made Gerova's shareholders aware that any shares had been issued to Shahini.

Let's focus on the timing, because once again it matters here. Pinero's e-mail sending out F-1 registration statement went out at 5:06 p.m. on July 28, 2010, and just four hours later Galanis called Hirst. And you heard what they talked about. You heard that on the very same day that Gerova's lawyers sent out these substantially final registration statement, Hirst told Galanis what he saw when he looked at the document. Let's listen.

(Audiotape played)

MR. BLAIS: Ladies and gentlemen, Gary Hirst knew that the registration statement said nothing about the Shahini shares. He had just read the registration statement. He looked at the number of shares in the registration statement.

What did Gary Hirst say to Galanis about that? "That whole, that whole Shahini thing, I mean nobody, they totally missed it, everybody."

Gary Hirst didn't know he was being recorded. Gary Hirst didn't know that what was in his mind was being captured real time.

I am going to play the relevant snippet of the recording again and ask you to focus on Hirst's tone. Does he sound concerned that everybody missed the Shahini thing? Does he seem disturbed or panicked? No. He seems gleeful. He laughs. He seems happy that he and his partner in crime, Jason Galanis, are pulling a fast one over on everybody. He is congratulating Jason Galanis on the success of their fraud scheme.

Listen again.

(Audiotape played)

MR. BLAIS: Again, there is no expression of concern here. There is no directive that this thing that everybody missed has got to be fixed. Instead there is laughter. They totally missed it. Everybody.

Now, ask yourselves a few other questions about this recording. Who is Gary Hirst confiding his secrets to? Who is he cozying up to with the information about what is missing in the registration statement? Jason Galanis. A man with whom Hirst had a long-standing business relationship dating back to at least 2007. A man who had been barred by the SEC from being an officer or director of a public company for five years.

Do Hirst and Galanis sound like two people who only know each other in passing? No. They sound like close business associates, confidants, friends, partners in crime, talking about business deals and transactions and the things they were working on together, including their criminal activities.

Ladies and gentlemen, this recording is devastating evidence of Gary Hirst's guilt. You have heard from Hirst's own lips, evidence of his knowledge of the fraudulent nature of the Shahini share issuance.

What else could he have meant by the Shahini thing? And what else could it have been that everybody missed, if not the Shahini shares? That's exactly what he says in the recording. "I was just looking at the number of shares." He's obviously talking about the Shahini share giveaway.

You know that makes sense because in late July, when the conversation was recorded, people like Michael Hlavsa were still in the dark about these shares. And you know why everybody missed it? Because Hirst never told them. Because Hirst hid material and significant facts from his own colleagues and from Gerova's outside advisers. So the recording is a fourth way you know that Hirst knew the Shahini shares were a fraud and it is a devastating piece of evidence.

Now, finally we are at reason number five that Gary Hirst knew he was part of a fraud. Once people like Michael Hlavsa learned about the Shahini shares, the conspirators' cover story started changing, and it changed more than once.

When Hlavsa stumbled on the Shahini shares in late September 2010, he asked Hlavsa for the supporting documents. And you know that Hirst sent those documents to Hlavsa via Skype. That's Government Exhibit 600A. And you see that Hirst gives Hlavsa the original version of the cover story, which is that the fake consulting and warrant agreements tell an accurate story. But after Hirst told Hlavsa this original version of the cover story, all of a sudden the cover story started changing.

Let's face it, the original cover story wasn't very good because it is easily disproved. A guy in Europe made an introduction of an asset management firm here in the United States to Gerova? That story, which you know is reflected in the Shahini consulting and warrant agreements, wasn't a convincing one because it was so easy to show that it was false. Anyone could just ask Albert Hallac, who made the

Weston introduction to Gerova, and easily disprove that Shahini had a role. So Hirst and Galanis needed to change the cover story, and that's exactly what they did.

Let's look at Government Exhibit 602. You see from the cover page that this is another draft of Gerova's cover statement, this time from January 2011. And you recall Hirst was talking about earlier draft of this document in the July 2010 recording with Galanis when he said he was looking at the registration statement and everybody missed that Shahini thing.

Let's turn to page 89 of Government Exhibit 602 and look at note 6: "In March 2010, we agreed to issue to Balkan Hellenic, LLC, an affiliate of Mr. Galanis, a three-year warrant."

And just a few lines further down: "A fee we agreed to pay to Mr. Galanis or his assigns in consideration for his facilitating the acquisition of the assets of the Wimbledon funds and his introduction of Keith R. Harris and the opportunity to acquire Seymour Pierce."

Then just a few lines down from that: "On May 26, 2010, the warrant was exercised and, pursuant to the cashless exercise provisions thereof, Balkan Hellenic and its affiliates received shares."

So here is cover story number two. The warrant and the 5 million shares didn't actually go to Shahini; they went to an entity called Balkan Hellenic.

Ladies and gentlemen, that cover story doesn't make any sense for a number of reasons.

(Continued on next page)

MR. BLAIS: (Continued) First, it totally conflicts with the first cover story in every way. You saw the actual consulting agreement and warrant agreement. There's no mention of Balkin Hellenic in these documents, there's no mention of any fee that was owed to Jason Galanis, and the Shahini consulting agreement on its face says that Shahini was supposedly owed a fee for making the Weston introduction. It says nothing about Keith Harris or Seymour Pierce, and you know that the shares were actually issued to Shahini, not to Balkin Hellenic.

Also, when Hirst sent the Shahini warrant agreement to Hlavsa over Skype, he didn't say anything about Balkan Hellenic, he said the deal was with Shahini. Not Balkan Hellenic, Shahini. Cover story number two just makes no sense.

Let's talk about how you know that the Balkan Hellenic story is entirely made up, just like the Shahini story. You saw evidence of Shahini and members of the Galanis family talking about Balkan Hellenic, but it was months after the Shahini share was issued.

Look at Government's Exhibit 1093. In July, 2010, Shahini is listing things that would need to be done to set up the Balkan Hellenic partnership. Ladies and gentlemen, Shahini and the Galanises are crafting cover story number two before your eyes. Balkan Hellenic didn't exist when the Shahini shares were issued. The idea that the warrants went to Balkan

Hellenic is just another cover story that doesn't make any sense.

Ladies and gentlemen, it's hard to keep a lie straight, particularly when it has a lot of moving pieces. But just a few short days after the draft registration statement from January 4th, 2011, we just looked at with the Balkan Hellenic story, a new lie appears.

Let's look at Government's Exhibit 589, Gerova's January 28th, 2011 letter to the New York Stock Exchange signed by Gary Hirst. Let's look at page 11 of this document, and you'll see cover story number three. Let's look at the language. 'In March, 2010, we agreed to issue to Mr. Galanis a three-year warrant entitling the holder of purchase up to 2.2 million of our shares."

Further down in the paragraph, Mr. Galanis advises that he transferred the warrants to a limited partnership unrelated to the company for his businesses.

So you've now seen three different cover stories for issues of shares to Shahini. Cover story one, Shahini introduced Weston to Gerova and millions of warrants were issued to Shahini as payment. That's what's reflected in the fake consulting warrant agreements, cover story two, Jason Galanis introduced Weston to Gerova, and the warrants were issued to Balkan Hellenic, and now cover story number three, Galanis introduced Weston to Gerova, and the warrants were issued directly to Galanis; not Shahini and not Balkan Hellenic.

The thing about all of these cover stories is, one, they conflict with each other, and two, none of them are true. Page 3 of the NYSE letter, the document we've just been looking at, tells you who made the Weston introduction to Grover; Joe Bianco, not Ymer Shahini, not Jason Galanis, not Balkan Hellenic. None of the cover stories are true, that's why they're cover stories. They're designed to hide the truth of what really happened, which is that the shares were issued to Shahini for no reason at all so that they could be sold for the benefit of Hirst, Galanis, and other members of the conspiracy.

Let's be clear. Who signed the letter for cover story number three, the story that these warrants were supposedly issued to Jason Galanis? Gary Hirst. If Galanis had earned warrants and then transferred them to Balkan Hellenic, why did Gary Hirst sign an agreement granting warrants to Ymer Shahini? If they were Galanis' warrants, why did Shahini get Gerova's shares? And if they were Galanis' warrants, why did Hirst say anything about that to Hlavsa when he was sending him the warrant agreement via Skype?

Ladies and gentlemen, as the cover stories change, they get more complicated, but the simple explanation supported by the evidence is also the one that makes the most sense; Hirst and Galanis took advantage of a runup in Gerova's stock price to issue shares to themselves, and to accomplish their goal they put the shares in the name of somebody who they could control, Ymer Shahini, who could get restricted shares immediately. All of the fake documentation, all of the cover stories are just efforts to hide the real facts and the real crimes that the defendants committed.

Now, I've just gone through five reasons why the evidence shows that Gary Hirst knew the Shahini shares were a fraud. You heard about backdated documents, changing cover stories, important and significant facts that were withheld from Gerova's officers, lawyers, and shareholders, and SEC filings that omitted material facts. Ladies and gentlemen, all of these things do not happen by accident. They are not part of a long series of coincidences. They are the facts, the evidence in this case that show you that Gary Hirst knowingly participated in the fraudulent scheme to issue shares to Ymer Shahini, and that he did so with the intent to defraud Gerova's shareholders. This evidence is what shows you that Gary Hirst is guilty of the crimes what he is charged with.

Before I move on, I want to mention a few things about the vote by Gerova's board of directors in October, 2010 to approve the issuance of the Shahini shares. First, Gerova's articles of association, bylaws if you will, require the approval of Gerova's directors before shares are issued -- you can see the language, "the directors may allot, issue, grant options over, or otherwise dispose of shares" -- second, Gerova's board did not approve the issuance of Shahini shares in a timely fashion before they were issued -- there's no real dispute about that -- and third, the members of the board that you heard from during this trial believed that share issuances required approval of Gerova's board of directors before issuance, and the fourth thing to note about Gerova's board of directors is that it approved the issuance of the shares to Shahini after the fact on October 6th, 2010.

Jack Doueck testified that when the issue came up at the board meeting, he was not aware that Shahini was getting more than 5 million Gerova shares or that the shares were unrestricted. He explained that it would have been important for him to know those facts before voting because Shahini would have been receiving unrestricted shares before the Stillwater investors that he represented who had only received restricted shares of Gerova in exchange for the assets they contributed to Gerova.

Common sense tells you that Gerova's board wasn't told the Shahini shares were the product of fraud. If Gerova's board knew the full story, if they knew that documents supporting the share issuance were fake, if they knew the Shahini shares were the result of a fraud, the board wouldn't have approved the share issuance, before the fact, or after the fact. So the board's ratification of these shares isn't worth the hill of beans. A board needs full disclosure, it needs all the facts, the complete story before it votes. Common sense tells you that they didn't have the full story here, that the board was deceived in the same way that Michael Hlavsa, and Hodgson Russ, and Gerova's shareholders were deceived.

Now I want to talk for a few minutes about some other things that really aren't in dispute in this case, and that is what happened to the 5 million shares that Gary Hirst issued to Ymer Shahini. There's no dispute that Shahini's shares of Gerova were deposited in brokerage accounts, four different brokerage firms. First, Roth Capital, which ultimately rejected the shares. Why did Roth reject the shares? You saw that in Government's Exhibit 300. Roth rejected the shares because they could not determine where the warrants, ultimately stock, came from, and that's not surprising given the changing stories used to justify the share issuance.

When Roth rejected these shares, you saw that they next ended up at CK Cooper. You heard from Alex Montano that immediately after the Gerova shares were deposited into Shahini's account at CK Cooper, $13 million flowed out of the account in a period of a week. You saw in Government's Exhibit 909 that over the course of a few months, more than $19 million flowed out of the three brokerage accounts that accepted the Shahini shares. That was CK Cooper, Raymond James, and Murphy & Durieu.

It was not Gary Hirst's role in the scheme to sell the Shahini shares on the open market -- Jason Galanis had other people to do that -- but I expect that Judge Castel will instruct you that the law does not require that all the members of the conspiracy have an equal role. Nor does it require that each and every member of the conspiracy participate in every act done by the conspiracy. And that makes sense.

Let's take a simple example. Think about a group of people agreeing to rob a bank. The person who drives the getaway car is just as responsible as the person who runs into the bank with guns drawn. It's not all that surprising that each member of a conspiracy would have a distinct role.

In this conspiracy, in this fraudulent scheme, Gary Hirst had the power of the pen. That was his role. He could make things happen with the stroke of a pen. He could issue shares with a letter to Continental. His job was to get the shares to Shahini, and he did that job; Shahini got his shares.

Let's be clear. Hirst had an important role. A critical role. The scheme couldn't have succeeded without him. Without the shares, nobody could profit, nobody could make any money. Gary Hirst was an indispensable part of this conspiracy because without the shares, nothing else happens.

It was ultimately the job of others in the conspiracy, including Derek Galanis, Jared Galanis, John Galanis, and Shahini himself to dispose of the Shahini shares, to turn those shares into money. But just like the getaway driver is responsible for the bank robbery, after Hirst fraudulently issued the Shahini shares, he was responsible for the act of his coconspirators in cashing out the Shahini shares. Without him, the crime would have been impossible. He was an inside man.

Of course it was foreseeable to Hirst that his coconspirators would sell the shares that he authorized, that was the entire point of engaging in this elaborate scheme to issue them in the first place. And given the lack of liquidity in the market for Gerova's shares, the relatively low volume of shares that traded every day, it was also foreseeable to Hirst when he gave away over 5.3 million shares of Gerova that illegal, manipulative methods like matched trading would be used to sell those shares. Otherwise, the sale of these shares would have completely tanked the share price of Gerova. That's exactly what you saw happened when the Shahini shares were sold without pre-arranged buyers lined up.

You know from Government's Exhibit 334 that Gerova shares were sold from Shahini's CK Cooper account starting on June 14th, 2010. The stock price of Gerova on June 14th was $17.25, the highest stock price Gerova ever received. After two weeks of sales from Shahini's account, the stock price on June 28th was $6.44. The Shahini sales were flooding the market. They were tanking the stock price because nobody wanted to buy that many Gerova shares.

The conspirators had a supply and demand problem; too much supply and not enough demand. The conspirators had all these shares to sell, but they couldn't sell them without tanking the market for Gerova shares. So the conspirators needed a solution. They needed to create their own demand, and they did just that. They recruited corrupt investment advisors who agreed to be on the other side of the Shahini sales.

You heard testimony from Gavin Hamels of Martin Kelly Capital that in June of 2010, more than $25 million of his clients' funds were frozen by the SEC, so Hamels had a problem. You know that at the same time, Jason Galanis and his coconspirators had a problem, as well; they couldn't sell their Gerova shares held in Shahini's name without tanking the stock price.

So Galanis came up with a solution to both his and to Hamels' problem. Galanis agreed to give Hamels a bribe, to give Hamels' clients free shares in two companies that Galanis controlled. But Hamels had to agree to do something in return; to buy Gerova shares, and he had to agree to buy those shares exactly when he was told to do so by members of the conspiracy, and that's exactly what he did.

Take a look at Government's Exhibit 903. This is how the conspirators solved their problem. This is how they avoided tanking the market for Gerova shares when they were dumping the Shahini shares on the market. They created their own market. When Shahini was selling, Martin Kelly was buying. Martin Kelly was buying at the price and the quantity that the conspirators determined. Because of the coordinated buying and selling, because of the matched trading, the price of Gerova stopped falling. It leveled off. Between July of 2010 and September of 2010, when the matched trading with Hamels is occurring, the stock price of Gerova remains pretty stable.

The conspirators soon faced another problem. Hamels' employer learned about the dirty arrangement that he had made with Jason Galanis, and Hamels was fired, so Galanis and his coconspirators had to find another investment advisor to pick up where Martin Kelly left off, and they found one, an investment advisor named Jim Tagliaferri, and you saw the same pattern once again, Government's Exhibit 904. When Shahini is selling, Tagliaferri is buying.

You heard who ended up losing as a result of this matched trading. Who ended up holding the bag at the end of the day when Jason Galanis' role at Gerova became public in late 2010 and early 2011. People like Rita Cole, people like Eleanor Kram, real folks who had worked hard all their lives to build a nest egg for their children and their families, ordinary people who trusted their investment advisors to protect their hard earned money so that they would have something left to pass on to their children. People who lost hundreds of thousands, sometimes millions of dollars after their accounts had been loaded with shares of Gerova by corrupt investment advisors, shares that had in large measure come from Ymer Shahini, shares that had been issued by Gary Hirst.

Now, if people like Rita Cole and Eleanor Kram were the big losers from the matched trading, you also saw who the big winners were, the members of this conspiracy.

Take a look at Government's Exhibit 909. $19.1 million of profits were withdrawn from the Shahini accounts. Who did those profits go to? Basileus Holdings, that's Jason Galanis. The Galanis Family Trust, that speaks for itself. Stanwich Absolute Returns, that's Jason Galanis. 1920 Bel Air, LLC, also Jason Galanis. Little Giggles, LLC, more Galanis. Ymer Shahini gets some money, too.

Gary Hirst also benefited from the spoils of the scheme to the tune of $2.62 million. Now, you heard that in June of 2010, Gary Hirst owed money to Weston because a Weston fund had invested $5 million in a hedge fund that Hirst managed called the Global Asset Fund. Albert Hallac had asked for Weston's investment back, but only part of it had been returned. As of June 22nd, Hirst still owed Weston $2.62 million.

You saw what happened on June 22nd, 2.62 million goes from Shahini's CK Cooper brokerage account to the bank account of Taurus Global, it then goes to the bank account of Pennine

Investors, and from there goes to pay off the obligation that the Global Asset Fund owed to Weston.

How do you know that Gary Hirst is the beneficiary of this money? These entities, Pennine, Global Asset Fund, Taurus, they're all Gary Hirst. Hirst is all over them.

Let's focus on the evidence that shows you that. Look at Government's Exhibit 422 which lists Hirst as the joint owner and only signatory of the Taurus bank account. Look at Government's Exhibit 423 which lists Hirst as the investment manager of Taurus. You also saw Government's Exhibit 418 which lists Hirst as the joint owner and sole signatory of the Pennine bank account. Look also at Government's Exhibit 419 which lists Hirst as the investment manager of the Global Asset Fund, which changed its name to Pennine. Defendant's Exhibit 900B shows that Hirst was the president of Pennine from May of 2001 through June of this year. You also saw Government's Exhibit 1210 in which Hirst acknowledges that Taurus and the Global Asset Fund are his Cayman Island hedge funds.

Finally, when Albert Hallac and the folks at the Swiss bank were sending emails about Weston's $5 million investment in Global Asset Fund, who are those emails to? Those emails are with Gary Hirst. When Weston got a promise that their investment in the Global Asset Fund was guaranteed against loss, who signed the letter making that promise? Gary Hirst.

Ladies and gentlemen, the evidence makes clear that

Taurus is Hirst, Pennine is Hirst, and the Global Asset Fund is Hirst. Hirst is the one running these funds, he's the sole signatory on the bank accounts, he's the one communicating with investors like Albert Hallac. These are Gary Hirst's hedge funds. And when Gary Hirst's hedge fund, the Global Asset Fund, owed $2.62 million to Weston in June of 2010, how did it pay that debt? Hirst took 2.62 million that was part of a margin loan taken from Shahini's CK Cooper account and used that money to pay the debt to Weston. Hirst used criminal proceeds, money that came from the fraudulent Shahini shares that Hirst issued, to pay a debt owed by a hedge fund that he ran.

Hirst benefited from the fraudulent Shahini shares, too. Just a month after the Shahini shares were issued, Hirst got his piece of the pie. Hirst got his payoff, Hirst got his share of the money. Because in the words of Gary Hirst, "everybody had totally missed it". But not forever, ladies and gentlemen. That's why we're here.

Ladies and gentlemen, as a result of everything we've just talked about, Gary Hirst has been charged with four crimes. Those four crimes are conspiracy to commit securities fraud, substantive securities fraud, conspiracy to commit wire fraud, and wire fraud.

I'm going to talk about the charges for just a bit before I sit down, and I'm going to mention a few things that I expect Judge Castel will say in his instructions to you. To be clear, you should take your legal instructions from Judge Castel, not from me, but it's helpful for me to be able to talk about the evidence here in the context of the legal instructions that I expect you'll hear from Judge Castel.

So let's talk about substantive securities fraud, which is Count Two of the indictment, for just a bit.

THE COURT: Ladies and gentlemen, the law requires me to give both sides an overview of the instructions that I will be giving in my final instructions to you so that they may appropriately craft their closing arguments. If any lawyer states a principle of law which is at odds with the principles I give you in my final instructions, it's my final instructions that control.

Go ahead, Mr. Blais.

MR. BLAIS: Thank you, your Honor.

The government has to prove that in connection with the purchase or sale of securities, Hirst did one of three things: That he either employed a scheme to defraud, made it an untrue statement about a material fact, or left something out which was material, an omission, or engaged in an act or practice that operated as a fraud or deceit upon a purchaser or seller.

The government has clearly established this based on the evidence I've already gone through. The entire scheme to issue shares to Shahini for no legitimate reason, and to then not disclose these shares to Gerova's shareholders in Gerova's public filings, was a scheme to defraud investors. The failure to disclose the existence of Shahini's shares in Gerova's 20-F was an omission of material fact that Gerova's investors would have wanted to know. Based on the evidence I've already gone through, the government has established the fraudulent nature of the scheme beyond a reasonable doubt.

The government also has to prove beyond a reasonable doubt that Hirst acted knowingly and with an intent to defraud. I've already spent a lot of time walking you through the evidence that shows how Gary Hirst knew he was involved in a fraudulent scheme, and that evidence is overwhelming. That includes the recording, the backdated document signed by Hirst, the hiding of information from people like Hlavsa, and the change in cover stories used to justify the issuance of the Shahini shares.

Finally, the government has to show that either the mail or an instrumentality of interstate commerce was used in connection with the fraudulent scheme. An instrumentality of interstate commerce is just something that's used in connection with business that's conducted across state lines. So a fax or an email is an instrumentality of interstate commerce.

There were plenty of examples of instrumentalities of interstate commerce that were used in connection with this fraudulent scheme. Like the emails where Shahini was recruited into the scheme. Like Government's Exhibits 1004, 1014, 1090, 1091. You've also seen the Skype chats between Hirst and Hlavsa, Government's Exhibits 600A through D. Email and other internet communications platforms like Skype are instrumentalities of interstate commerce. The interstate aspect of the scheme is easily established.

The evidence clearly establishes that the government has proved beyond a reasonable doubt that Hirst committed securities fraud in connection with the issuance of over 5 million shares of Gerova to Shahini.

Hirst is also charged in Count One of the indictment with conspiracy to commit securities fraud. That charge basically means that he agreed with at least one other person to commit securities fraud. The evidence establishes beyond a reasonable doubt that Hirst agreed with others, including Jason Galanis and other members of Galanis' family, to commit securities fraud.

The government has to prove that the conspiracy existed and that Hirst knowingly joined the conspiracy. Hirst and Galanis didn't sit down over coffee and write up the terms of their illegal agreement, but the evidence clearly establishes that there was such an agreement. The recording alone shows you that Hirst and Galanis were aware that the Shahini shares were being hidden and had agreed to keep it that way. The other evidence we have discussed, the backdated documents signed by Hirst, the hiding of information from people like Hlavsa, and the change in cover stories show that Hirst knowingly became part of the conspiracy.

THE COURT: Mr. Blais, you have 10 minutes left.

MR. BLAIS: Thank you, your Honor.

One thing that the government must prove in connection with Count One is that a member of conspiracy committed an overt act in furtherance of the conspiracy, and that's easily found here. Every act done by the conspirators to get the Shahini shares issued and sold was an overt act in furtherance of the conspiracy. So each of the emails between Derek Galanis and Shahini in which Shahini is recruited into the scheme is a separate overt act, as is the letter signed by Hirst and sent to the New York Stock Exchange on January 28th, 2011 falsely claiming that the shares issued to Shahini were, in fact, earned by Jason Galanis. So the overt act element of Count One is easily satisfied.

Now let's talk about substantive wire fraud, Count Four of the indictment. To prove wire fraud, the government has to establish beyond a reasonable doubt the existence of a scheme to defraud others of money or property by false or fraudulent methods, and that Hirst knowingly became part of the scheme and acted with an intent to defraud. The evidence I've already gone through establishes this as well.

In connection with wire fraud, the government must prove that a wire that crossed state or international boundaries is sent in furtherance of the scheme. A wire could be an actual wire of money, but it can also be an email or a fax. Those are wires, as well. And you've seen a number of wires of money as well as emails that were sent in furtherance of this scheme, which are also wires, including emails sent here to New York.

For example, Hirst emailed two letters to Continental, the May 26th letter directing the issuance of Shahini shares, Government's Exhibit 500, and the June 1st letter directing the cancellation of the Manley shares, Government's Exhibit 504.

There are also emails with the New York Stock Exchange that were sent from out of state, including Government's Exhibit 551 and Government's Exhibit 585. Any of these emails is an interstate wire that was part of the scheme of which Hirst played a part. So this element of wire fraud is easily satisfied, as well.

Finally, Count Three charges a conspiracy to commit wire fraud, which is just an agreement among two or more people to commit wire fraud. All of the evidence supporting the other three counts also supports the conspiracy to commit wire fraud count. The same evidence that establishes that Hirst knowingly joined the conspiracy to commit securities fraud also establishes that he knowingly joined the conspiracy to commit wire fraud. The evidence at trial establishes the government has proven this offense beyond a reasonable doubt, as well.

One last thing that the government has to show with respect to all four counts, and that is venue. Venue basically means that there has to be an act or occurrence here in the Southern District of New York that furthers each of the charged offenses. That's easily met here.

First, you heard a stipulation that during 2010, Gerova trades were processed on the New York Stock Exchange servers located here in Manhattan. Every illegal matched trade in Gerova that hit a server here in Manhattan satisfies the venue requirement.

There are lots of other things that establish venue here in New York. Continental Stock Transfer was located here in Manhattan, and all correspondence to Continental about the Shahini shares was directed to Manhattan, including Government's Exhibits 500 and 504. Bottom line, there are more than enough actions that took place in the Southern District of New York to satisfy the venue requirement for each count.

The government has established each and every element of each of the charged offenses beyond a reasonable doubt.

Ladies and gentlemen, at the start of this trial, my colleague, Ms. Mermelstein, asked you to do three things; pay close attention to the evidence, follow Judge Castel's instructions on the law, and use your common sense. The evidence that I just walked through makes absolutely clear that Gary Hirst was a knowing and willing participant in a fraudulent scheme to steal money from Gerova and its shareholders, and as a result, that he is guilty as charged.

In a few hours, you'll have the opportunity to return to the jury room to begin your deliberations. When you do that, and when you consider all of the evidence in this case, the evidence that I just described, and when you think about that evidence in light of your own common sense, you will find that there is only one verdict that's consistent with the evidence in this case, one verdict that fits the evidence and the law, which is that the defendant, Gary Hirst, is guilty as charged. Thank you very much.

THE COURT: Thank you, Mr. Blais.

Ladies and gentlemen, it's time for a break. It's 11:59, by my digital clock here on the bench. We're going to take a 10-minute recess. There is a snack in the jury room for you.

Then defense counsel will be given the opportunity to deliver a closing argument, if they choose. I'm advised that they will and that it will be about an hour and 10 minutes, which means that we'll break for lunch, let's say about 1:25. So you'll have a little bit of a late lunch.

But that's where we are, and so we're going to keep it a 10-minute break now. Do not discuss the case among yourselves or with anyone. Continue to keep an open mind. Back in action in 10 minutes.

(Jury not present)

MR. TREMONTE: Your Honor, you indicated to the jury that we would be an hour and 10 minutes. I think the discussion from the other day was 110 minutes.

THE COURT: Fine. Very good. Thank you.

(Recess)

THE COURT: Let's bring our jurors in.

(Jury present)

THE COURT: Mr. Tremonte, anytime you're ready.

MR. TREMONTE: Thank you, your Honor.

Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

MR. TREMONTE: Gary Hirst is not guilty. He did not hide anything from anyone, he did not backdate any documents, and he did not get any money.

Remember in our opening at the start of this case, my colleague, Ms. Harris, said that it comes down to a simple question, and that question is, what was in Gary Hirst's mind when he signed the warrant agreement and when he signed the stock issuance letter to Continental?

Let's start with the warrant agreement. The metadata from that agreement shows that the government's backdating theory is wrong. The warrant agreement was created in March, 2010, not May, and Gary believed that that warrant agreement was proper. From his perspective, it was perfectly legitimate.

Jason Galanis was entitled to a finder's fee and Jason Galanis wanted that fee assigned to Ymer Shahini. Back in March, 2010, as you've heard, Gerova had no cash, so paying the fee in warrants instead of cash was a bargain. That was a good thing for Gerova.

Now, the government's main witness, Michael Hlavsa, as you heard, told what Joe Bianco, who was then the CEO, said to him about this arrangement. Joe Bianco ratified the warrant agreement and told Hlavsa that it made sense. It made economic sense because it allowed the company to pay its obligation without spending cash that it didn't have. If the stock price went up under this deal, then Shahini would make money, but if it stayed the same or if it went down, then Shahini would get nothing. Either way, good for the company because the company's debt got settled. It was a completely proper business decision at the time, it was a completely proper business decision when it was ratified by the board, and from Gary's perspective, again, going back to what was in his mind, his mind alone, it made perfect sense, and it was entirely proper.

As it turned out, the stock price of Gerova did go up, so Shahini naturally exercised his rights and he sent an exercise notice. It's a piece of paper that says "I'm exercising my rights under this agreement". At that time, Gary was on vacation in California with his family. He received the notice, and even though he was in California trying to enjoy a vacation, he did exactly what he was supposed to do. When he got the notice, he knew that the company was under a contractual obligation pursuant to the terms of the warrant agreement to issue the shares. That's what the agreement required, so everything in order, Gary forwarded the notice, together with a legal opinion from Shahini's lawyer, and he sent it to Continental Stock Transfer.

He sent the share issuance letter, which you've seen and you'll see again, contains all the details of the transaction. Nothing was left out of that letter. And you heard that Continental Stock Transfer kept all of that information in its files on record and available to anyone at any time. So there was nothing wrong with Gary Hirst signing a warrant agreement, and there was nothing wrong with Gary Hirst signing the letter that went to Continental Stock Transfer with all that information. Gary did everything just the right way, did everything through Continental, nothing left out, nothing hidden. Those are the facts at the heart of this case.

As I've said, Gary signed two pieces of paper, which he thought were perfectly legitimate. He didn't hide anything. And as we'll show you, the evidence shows you very clearly the opposite of concealment as to Gary Hirst, it proves that Gary was the one who was trying to get the company, and in particular trying to get Mr. Hlavsa, to record the Shahini transaction in the company's public filings. That's clear.

The evidence is also clear that Mr. Hirst provided all the relevant information to Mr. Hlavsa, and not just to him, also to Joe Bianco who, as I mentioned, was the CEO, and to Steve Weiss who, as you heard during the trial, is the company's outside lawyer.

The evidence also shows that the board of directors, the individuals who are charged with running the company and making the biggest decisions on its behalf, had access to the warrant agreement, the details of the warrant calculation, Hirst's letter to Continental, and they knew when it came time to ratify that arrangement exactly how many shares had been issued to Mr. Shahini.

Now, the board carefully reviewed the warrant agreement, the Shahini consulting agreement, and the issuance of shares to Shahini, and they unanimously approved that transaction. Not one of the directors, no one involved in advising the company on that decision, opposed or dissented from the transaction in any way. But as you saw during the trial, there's one thing no one wants to admit, and that's the obvious. No one wants to admit that it all seemed perfectly legitimate at the time.

The witnesses who took the stand who were actually involved with the company back then in 2010, Michael Hlavsa, Jack Doueck, Marshall Manley, they want you to think that they had doubts, or they want you to believe that they lacked information about these transactions. They want you to believe that key facts were withheld from them. They want you to believe that they would have spoken up and that they would have objected if only they had known the whole truth.

Well, Gary would have liked to have known the full truth, too. He had no idea about the fraud that Jason Galanis had in the works. He had no idea that Shahini and Galanis, together with others, would conspire to violate the terms, express terms of the warrant agreement, violate Regulation S, which you heard about, violate all of the representations that Shahini made to his lawyer and were passed along to the company, find corrupt brokers who were willing to sell the shares in the United States, against the law, bribe corrupt investment advisors and orchestrate a massively complicated matched trading scheme which resulted in the shares being dumped on unsuspecting, innocent investors. None of that was foreseeable to Gary Hirst. He never imagined any of it would happen.

If you set aside the government's speculation and look carefully at the evidence, as we will do, it's clear that there's no proof that Gary Hirst knew about or could have foreseen the complex fraud and the parade of horribles that ensued upon somebody else's scheme.

Now, I'm going to ask you again to return to what we think is the key question in the case, and again, that is what was in Gary Hirst's mind when he signed these two documents. The best evidence of what was in his mind is the things that I mentioned earlier; he didn't conceal anything, he didn't backdate any documents, and he didn't get any money. Once you've heard the evidence, which we'll go through now, I'm confident you'll know what was in Gary's mind, you'll know that he acted in good faith, and you'll know that he's not guilty of these charges.

Beginning with the first point, that Gary didn't hide anything. Let me just say for starters that the theory that the government is advancing that Gary concealed information from Hlavsa is nonsensical on its face. It is undisputed that on May 26th, 2010, Gary sent a letter to Continental which explained all the details. The letter said who Shahini was, it said how he obtained the warrants, it said exactly how many shares he got, and it said where the shares were going. It's all in there.

You don't try to hide information by sending it to Continental Stock Transfer. That makes no sense. You send a letter like that to Continental Stock Transfer, and you may as well be putting it on a billboard. You heard that from Continental itself, from Mr. Mullings who came into court. He was in charge of compliance at Continental. He told you that Continental keeps records of stock issuances and provides those records upon request. He told you that Gerova was a client, and he showed you what Continental had from Gerova in its file every single day up to the present from May 27th. There's no dispute about that.

As Mr. Mullings testified, Continental had in its file the share issuance letter and the letter from Mr. Shahini's lawyer. That's Government's Exhibit 500.

As I'm talking, the documents that I refer to will come up on the screen.

That letter states the company received an exercise notice from Shahini and a legal opinion letter from Shahini's lawyer that the company was authorizing the issuance of 5.3 million shares to Shahini and that Shahini was offshore, a non-U.S. resident, and that the shares were subject to Regulation S.

We'll touch on that from time to time, but as you know from the testimony of, among others, Professor Laby, Regulation S means that for a period of time those shares could not be traded in the United States. Not legally, anyway.

Now, the letter, Government's Exhibit 500, is completely transparent. There's nothing hidden. It shows precisely what the government accuses Gary of trying to hide. Again, this letter was on file, available to anyone from the company, accessible at any time. As Mr. Mullings told you, within a day of receiving it, Continental took the information and updated its records relating to Gerova.

Let's look at those records. Let's look first at Government's Exhibit 508. I call it the common master sheet. This shows the addition of the Shahini shares. Now, remember from the trial, it says 5/17/2010, but there's a handwritten note -- and that's the first yellow highlighted entry -- that was a mistake, it was 5/27/2010. That was an internal mistake at Continental.

Now, notice what it said. Remember I said it's like putting information on a billboard? Here's your first billboard. The Shahini shares are right there staring you in the face. Not just the date, not just the number, but an explanation, "Company instruction exercise of Class 1 warrants." Ladies and gentlemen, I urge you to inspect this document with care in the jury room. You will see that there are not many indications like that. You will see, if you look at this, that anybody who knows what they're doing, like for instance the CFO of a publicly-traded company, looking at an entry like that will see it leaping off the page. There's no mystery here. You can't miss it. Exact number of shares is right there.

Also, the impact on the total number of shares outstanding is also clear as can be. If you look all the way to the right, there's a running total, and you heard testimony about this, as to the number of shares, and every time there's an issuance, as there was here, that number goes up, and every time there's a cancellation, as there was on June 7th, you heard a lot about that, the Manley shares, the number goes down.

You heard argument from the government about how these two numbers are intended to offset each other and lead everybody astray. Nothing could be further from the truth. Again, the CFO of a public company inspecting a document like this or communicating with the professionals at Continental Stock Transfer will not be misled. There is no way he would have failed to notice that these two numbers each had a significant impact on the stock records of Gerova. No way.

This information, again, was properly recorded. Anyone checking with Continental could have seen it. And as Mr. Mullings told you, companies routinely ask for this information. It's not like they check on it once every couple years, it's not like they check on it from time to time, they check on it regularly. And Continental gets the most requests from companies around the time of a company's public filings. Remember, Mr. Mullings told you that. So quarter end and year end, they're going to get a lot of activity, a lot of calls.

In late May, 2010, what was Gerova doing? Gerova was preparing a public filing. And not a minor one, it's 20-F.

It's the annual report for the company. So everyone who understands how this stuff works had reason to expect the company would contact Continental right around May 27th for up-to-date information about what was going on with its stock.

Here's another billboard, it's the shareholder list. This shows all shares, both the ones held in street name and the ones held in the name of beneficial owners, which is Defendant's Exhibit 304. Shahini shares were delivered electronically to a brokerage house so they ended up in a street name, and you heard testimony about this, the so-called CEDE & Co. number.

You can compare what's going on in the CEDE & Co. number if you hold side-by-side Defendant's Exhibit 301 with Defendant's Exhibit 304, as we have on the screen here. You'll see, as is appropriate and makes sense, that when the Shahini shares are issued, there is a significant jump in the size of the number of shares in CEDE & Co. held in the street name, and that makes sense. Everybody who does business with a stock transfer agent knows that this is going to happen and knows that it's going to be available for anybody to see.

What else was available for everybody to see at Continental? Let's review this because it's important. First, they were able to see the total number of shares issued to Shahini; second, the fact that those shares are subject to Regulation S; third, the precise impact of that issuance on a number of shares outstanding; and fourth, the precise impact on the CEDE & Co. All this information, and more, was all at Continental, impossible to hide, and it was there, again, keep in mind, because Gary sent it there. That was part of his job.

Let's think about the government's theory in light of this, that Gary concealed the warrant exercise and the issuance of the Shahini shares by putting that information in the one place where he knew anyone could and likely would find it. That's nonsensical. That doesn't add up. Not only doesn't it make sense, but the government's theory is contradicted by more evidence which shows that Gary did communicate all relevant information to Mr. Hlavsa directly.

Let's start by talking about Mr. Hlavsa's testimony. He testified that there were things he wished he knew but did not know, and there were things, he said, that Gary should have told him but did not. But you notice, I think, the more I question Mr. Hlavsa, the more obvious it became that Gary actually told him everything, it's just that Mr. Hlavsa had a tendency to forget, until, that is, we reminded him of the facts. So let's go through his testimony.

Let's start with the Form 20-F, that's the annual filing that I mentioned. You heard testimony about the 20-F and the 20-F amended. There were two different filings in 2010. The first was on June 2nd. Again, that's when Gary was on vacation with his family in California. Remember, he's on vacation when he gets the exercise notice, and he's on vacation when the first version of the 20-F is filed on June 2nd. He doesn't come back until June 4th.

We know that the 20-F was prepared in a hurry while Mr. Hirst was away. Hlavsa testified about that. Initially, he forgot, he said that wasn't the case, but then we looked at Defendant's Exhibit 1244 which reads -- it's an email from him -- "I was told earlier this was not a rush." This is an email about the Gerova 20-F, that's the subject line -- "it was not a rush. But now we get the email from Steve. I told everyone that I have two filings to get done by Monday and then on to Gerova."

Now, as you know, the first 20-F, the one that was filed when Gary was away, it did not reference warrants, the warrants that were paid to Shahini. Why not? Why was that left out? Don't know. Hlavsa might have missed it because the filing was prepared in a rush, as Defendant's Exhibit 1244 shows, he may have missed it because he simply forgot, he may have been distracted by the two other public filings that he was preparing at the same time. And by the way, remember the testimony, he wasn't preparing those filings for Gerova, he was working for other companies. He was also the CFO of Fund.com. He was also pursuing business opportunities in Peru with another company that he was involved with called Signature Gaming. Whatever these public filings were, they're not

Gerova, and he tells that you in the email. After those two, on to Gerova.

Whatever the reason, whatever the explanation for why Hlavsa was not paying attention, that wasn't Gary's fault. Gary's on vacation. And by the way, there's no evidence that any draft of that first 20-F was ever circulated to Gary before June 2nd, and his so-called signature on that document is nothing more than his name typed onto a certification form.

By the way, the subsequent 20-F is not signed by him, it was signed, or electronically signed or typed or whatever, appropriately by the chief executive officer and the chief financial officer.

But in any event there's no proof that Gary ever saw the first 20-F before it went to the SEC. In fact, the evidence shows that when Gary gets back from vacation on June 4th, he contacts Hlavsa, that's what the evidence shows, and he took steps to make sure that the new 20-F, the 20-F amended that was being prepared to be filed shortly, was correct.

So let's look at that, the second 20-F. Let's look at the emails that were actually written and exchanged at the time between Hlavsa, Hirst and others, which I think we'll agree gives generally a better indication of testimony six years after the fact and with the times set by it.

These emails give a clear indication of what people were actually thinking at the time. Let's look at them. Let's first look at Defendant's Exhibit 801. It's the June 13th email from Hlavsa to Hirst. "Gary," Hlavsa writes. "Please see final version on page F-16. It discloses $23.5 million in transaction costs. If you want to revise the language, we will have to have Ken review and Puglisi agree to the changes." As you can see from this email, Hlavsa tells Gary that the total amount of the transaction costs is $23 and a half million. That's the total amount of money that's spent on all fees combined for Weston, Stillwater, and Amalphis. Clearly, at the time of this email, Gary has already communicated to Hlavsa that he has some change in mind. "If you want to change the language."

Now let's look at Gary's response, Defendant's Exhibit 807. His response, you'll see, is crystal clear. Gary focuses specifically on the Wimbledon transaction. He focuses on the finder's fee, the very finder's fee at issue in this case. He says, "I just want to make sure that the 23 and a half million includes the finder's fee for the Wimbledon transaction." It probably does, you're the accountant, you're the CFO, I don't know for sure, I don't prepare the spreadsheets, but I just want to be sure. "Can you send a list of what comprises the 23 and a half million or confirm that the Wimbledon is included?"

Let's pause on this email. It's a very important piece of evidence. It tells you a lot, again, about what Gary Hirst was thinking at the time. He's calling attention to the exact fee at the heart of this case and which the government claims he lied about and was trying to hide.

Here you can see very clearly, Gary's not trying to hide anything about this. He's not lying, he's doing exactly the opposite, he's saying, Hlavsa, does the 23 and a half million you've got in the prior disclosure include the finder's fee? I just want to make sure. He says it twice, and he says it with an exclamation point. In other words, he's shining a great big bright spotlight directly on the fee that was paid to Shahini.

Now, this request, I suggest, if you think about it, assumes that Hlavsa is going to check. He's going to do his job. He's going to make sure that the fee is included in the 23 and a half, and he's going to run it by the outside professionals, the auditors and the accountants.

Again, the government's theory doesn't square with this at all. You don't shine a big bright spotlight, force the CFO to look at something, knowing that the outside professionals are also going to be thinking about it, if you're trying to hide it.

Let's look at another email from the same time, Defendant's Exhibit 802. It's from Hlavsa. Again, these are all in close succession. "Gary. Attached is proforma with the closing costs identified. There is no fee included for Weston." It's not in here yet. "I have not asked the accounting side about this yet," maybe he was still busy and distracted. "We would need the agreement, which I do not have, and then get buy-in from Riscica and Puglisi to modify the 20-F. Mike." Again, email shows Gary is trying to get him to pay attention, Hlavsa is starting to pay attention.

Notice that Hlavsa is pushing back a little bit. He reminds him again, look, if you really want to change this, I'm kind of under the gun, I've got a lot of things going on, but just keep in mind, Gary, I've got to run it by the outside auditors and that's going to be an issue.

Now let's look at the revised disclosure that Hlavsa proposes, Government's Exhibit 615, also a very telling document. Disclosure is the same as the one that was in the 20-F that was filed on June 2nd, except for one small very important change. It says that, "The payments that are owed for fees in connection with the de-SPAC transactions were satisfied through the issuance of 1,391,667 ordinary shares" -- that was in there before, but then there's the new stuff -- "and certain private warrants." That phrase is the only thing that's different. It was added at Gary's request.

Hlavsa sent this revised language and Gary responded, "This is correct and perfect. Approved."

So you know that Gary wanted this language in. He wanted specifically a reference to private warrants, even though it was not in the earlier filing that Hlavsa was responsible for when Gary was away. Gary wanted this to be correct. Again, the words are important. It says "warrants". It says "the fee was paid in warrants". That's the warrant agreement. That's the Shahini warrant agreement.

Now, we need to stay focused on the phrase "certain private warrants" a little more. It's one of the key pieces of evidence in the case and, again, it gives you valuable information about what's in Gary Hirst's mind.

What does it mean there? The only rational answer to what the reference to "certain private warrants" means is that it's a clear reference to the truth. All right? So the fact that the Wimbledon fee got paid to Shahini using private warrants.

Hlavsa was asked this question on the stand, this very question, and what did he say? He said, incredibly, "I don't know." Hlavsa took the stand and testified that he does not know where these words "certain private warrants" came from, and he does not know what the phrase refers to. But you know what those words mean and why Gary wanted them in the disclosure. He wanted them there because they are the truth. Obviously, the words "certain private warrants" are the very warrants issued in this case. So that's Government's Exhibit 615.

Remember, Gary asked Hlavsa specifically to check on the finder's fee for the Wimbledon transaction. That's Defendant's Exhibit 807. And because Gary told Hlavsa about the warrants, Hlavsa changed the disclosure to state correctly that the fees paid on the Wimbledon transaction, the very transaction that Gary drew his attention to, includes "certain private warrants".

(Continued on next page)

MR. TREMONTE: By the way, there is no evidence in this case that anyone else that paid private warrants in connection with the Wimbledon transaction. That's another way you know exactly what is being referred to here. The warrant agreement was disclosed and it was disclosed because Gary made sure that Hlavsa knew about it, and then he added it to the disclosure.

As you saw -- you will have in the jury room -- you have the 20-F amended it, it has that language in it. And that was what was filed with the SEC. That's what went to the public. Gary wasn't hiding anything. He was shining a spotlight on the truth.

Incredibly the government is saying by drawing Hlavsa's attention to this very issue he somehow supposedly is deceiving them. But you can't hide something by putting it on a billboard or shining a spotlight on it.

If, heaven forbid, any of us were committing a fraud and we were trying to hide these facts, we would not write an e-mail to the CFO specifically directing his attention to it. Not just to pay attention to it, to absolutely focus on it and look into it.

You wouldn't do that. You wouldn't try to get the CFO to try to pay attention. And remember, in addition to getting Hlavsa's attention, all this information, the same information, is already for several weeks now on file with Continental. The dates matter. We are in close proximity here. The letter went to Continental on the 27th. That's an established fact. Nobody disputes it. And the revised filing that's accurate gets done on June 16. Also not in dispute.

There should be no doubt that in the ordinary course of preparing the 20-F or any public filing, if Hlavsa was doing his job right he would have contacted Continental in a timely fashion with real time information about the company's stock. And one of the things that he certainly would have checked in the ordinary course would have been the number of shares outstanding.

Hlavsa himself told you that is what a CFO is supposed to do. He is supposed to check, and he is supposed to check not whenever it's convenient, but as close as possible to the filing date. And you have that in the transcript of his testimony at page 406.

"Q. How often do you perform the task of requesting a transactional list and reconciling that with information that you were aware of outstanding share issuances?

"A. Well, it can be done really any time. It's important that it's done prior to the issuance of any financial information to either the Securities and Exchange Commission or anybody else."

Now, in the government's theory the issuance of shares to Shahini was a secret issuance. Gary's timing and Gary's conduct here was incredibly stupid and reckless. His timing was stupid because he authorized the issuance of shares at precisely the moment when Hlavsa is most likely to be calling Continental for information about what is going on with the shares. That's what Hlavsa told you and that's also what Mr. Mullings told you when preparing a public filing.

Moreover, if Gary was really trying to keep things a secret, the Shahini transaction wasn't in the first 20-F. Remember the one filed on June 22. It's not there. If you're involved in a scheme to hide this information, you just caught a break. Right? They missed it.

Would he then just days later again say something to Hlavsa about the finder's fee, about Wimbledon in particular? Why wouldn't he just stay silent if he was involved in a crime, a cover-up? He didn't stay silent. He did precisely the opposite. He called attention to the fee and wasn't trying to hide anything.

The problem at the end of the day was Hlavsa. Hlavsa testified that for the first 20-F that was filed on June 2 he used share information as of May 24. He admitted that he should have used more up-to-date information. He admitted that the information that he used from May 24 was practically stale. That's his word, "stale." And he admitted that he used the same stale number -- think about this, the same stale -- it was already almost stale for the June 2 filing. He used the same number for the amended 20-F that was filed on June 16. So by then it's really stale. And he used that stale information even after Gary Hirst specifically directed his attention to the warrant exercise.

In plain English, ladies and gentlemen, Hlavsa screwed up. Dropped the ball on this one. He allowed the 20-F to get filed without asking Continental for updated information on the number of shares outstanding. That wasn't Gary's fault. It's not Gary's fault that Hlavsa didn't notice there was big jump in the number of shares. That's the oversight and that's Hlavsa's oversight.

It's clear if he had checked the number of shares outstanding, if he had called Continental on any date after May 27, when Gary sent the letter laying everything out, the truth, as Hlavsa admitted he should have done and as Gary certainly assumed he would have done, he would have seen the additional shares. He would have changed the number in the 20-F and that would have been accurate. But he didn't do that. And now he is blaming Gary.

Now, don't let the government convince you that the 5.3 million shares being issued at around the same time the 5.3 are being canceled is somehow suspicious or intended to camouflage what was going on here. As I mentioned before, that's wrong. It assumes erroneously that Hlavsa would not have known as the CFO, would not have known that Marshall Manley, who took the stand -- you heard his testimony -- he wouldn't know that Marshall Manley had recently been terminated, he wouldn't know about the lead purchase of his shares, he wouldn't know about the cancellation of his shares. That's not credible. It's not credible that the CFO of Gerova would not know that. It had just happened. Sure, he might look at the record and say, gee, those two numbers are identical. What a coincidence. Chances are better he might get hit by lightning, but it definitely would not escape his notice. He wouldn't forget that.

Again, if you look at the records, if you look at the records in Continental Stock Transfer's files, it's clear it's a whole different description. Those numbers aren't so far from each other. I think there's only four or five lines between them. This is not camouflage. This is not a cover-up. It's just a coincidence.

If you start playing around with the math, by the way, if you start multiplying numbers by some of the numbers that were used here, like 375 and 750 and stuff, what you will notice, if you do it for a while, when you get that 333,333, it's just a third. It's not like some crazy random number like 0176923. It's just a third.

So now you see, the more you really look at the evidence and the more you think about it, the more the government's theory that Gary was trying to hide information really does appear nonsensical. If he had been trying to hide things, he wouldn't have asked Hlavsa to confirm that the Wimbledon deal was included in the twenty and half million dollar number. He certainly wouldn't suggest including the phrase "certain private warrants" in a disclosure. That's like kicking a hornet's nest.

What is the appropriate response from the CFO? Warrants? What warrants?

The outside professionals? No one is going to pay attention to this? This is no way to hide something.

The government's theory on that score doesn't make any sense at all.

Now, even though Gary told Mr. Hlavsa about the fee and told him it was paid in warrants, as the e-mail showed, Hlavsa is still saying he should have known more, Gary should have told him more. What is it that Hlavsa should have known that Gary did not tell him? What piece of information did he not have? What was missing? A couple of possibilities. I am hypothesizing here. Let's review them.

Maybe it's that he would have listed Shahini on the beneficial owner chart on 20-F. It can't be that.

Government Exhibit 201, page 52. You heard testimony on this. Hlavsa testified on direct that Shahini belonged on this chart. That's what he said. Later he admitted on cross-examination that he was wrong about that. Shahini does not need to be listed on the 20-F. Only holders of more than 5 percent of the stock needed to be listed on the chart. 5 percent of 133 million shares -- that's the number that is in the document -- is about 6.7 million. That's more than 5.333 million. So Hlavsa agreed Shahini should not have been listed.

You know what else he agreed with? If there had been more shares in that number, it was even less likely that Hlavsa would be listed. Because if you have a bigger number total, then the number to get to 5 percent is higher. So no matter how you slice it, he wasn't supposed to be on that chart.

We went over it with Hlavsa. He initially testified erroneously and then he agreed.

Maybe what he would have done or what he wanted was to have disclosed Jason Galanis's role in the company. Maybe that's it. But that doesn't hold up. Everyone you heard from at trial knew about the SEC bar. They knew that Jason Galanis had a past, that he had issues. But they believed that because he was playing a limited role and wasn't actually on the board, didn't actually hold a title, that there wasn't a problem.

In fact, in January of 2011 -- this is in evidence -- they got written advice from a national law firm, DLA Piper, from a partner at that firm, who had formerly been a high-up lawyer at the SEC, that there wasn't a problem with Mr. Galanis being the CEO of a Gerova subsidiary. That's written advice that Jason can lawfully serve as an executive officer of a company owned by Gerova. And that's Defense Exhibit 1250 on your screen.

Like everyone else -- all the board members, executive officers of the company, and Gerova's outside counsel, Steve Weiss -- Hlavsa knew about Jason Galanis's SEC bar and he did not change the disclosure. So that's not it.

What else? It can't be that Gary is responsible for the fact that the $23.5 million number in the disclosure didn't change. Gary told Hlavsa about the fee. Hlavas had at least the consulting agreement. That is undisputed. So Hlavsa knew that originally it was a $2.2 million liability at minimum.

Gary told him about the warrants. So he knew that the value of the compensation might have changed depending on how you calculate the value of the warrants. But for some reason Hlavsa did not change the $23.5 million number. That number just stayed the change.

Hlavsa had no explanation for this. He was asked about at page 401 of the transcript. And when he was asked why knowledge of the Shahini consulting agreement didn't cause revisions that are in the filings, he said I don't know. He said it was an approximate number, a company estimate. But when pressed by the government, he testified, "The determination is materiality. If the issue is material, then revisions and amendments are made. In this circumstance the change was not made."

He didn't actually connect the dots. He said it wasn't material. He doesn't know.

Ask yourselves, ladies and gentlemen, why didn't he make the change here after Gary Hirst specifically requested confirmation that the fee paid on the Wimbledon transaction was in that number. Again, whatever the reason, it's not Gary's fault. It's an oversight, and it's Hlavsa's oversight.

So what is it that does matter? What information did Hlavsa want that he supposedly didn't get. Maybe he is saying that he would have wanted to know how the issuance of the Shahini shares impacted the total number of shares outstanding. I am just going through the possibilities here.

In their opening statement, the government talked in particular about the number of shares issued. They talked about the pie. Remember, it had the pieces of the pie. More pieces of the pie cut into, the smaller everybody's share.

According to the government, the question is, what was the impact of the Shahini issuance on the total pie and on everybody's initial slice?

This theory, too, doesn't really make any sense, for a couple of reasons.

First, the company at the time had about 130-some-odd million shares outstanding. It's a very, very large pie, and the issuance of shares to Mr. Shahini was just not that big.

Second, as it happens, the total number of shares outstanding does not change. You heard about that because of the fact that Mr. Manley's shares were retired about the same time.

Third, Shahini's shares were subject to Regulation S. Again, very, very important. Because they were subject to Regulation S, again, assuming everybody is actually complying with the law, then they can't be sold in the United States. That meant that there wouldn't be any meaningful impact on the U.S. market for Gerova's shares because of the Shahini issuance until that Reg S prohibition expired.

It's a key point. If everybody is complying with the law and everybody understands Reg S, these shares can't for a period of time, they can't be traded in the United States. So they can't impact the pie or any slice of the pie in the same way that a freely traded non-Reg S share can because you can't take them down to Wall Street and try to sell them. You have to sell them over in Kosovo or something, and I am not sure that would work very well.

Fourth, also important, you heard testimony about these F-1 registration statements. What's that all about? Well, the company is preparing, beginning quite early, beginning with the closing of the de-SPAC transaction in January 2010, to register over a 100 million shares of Gerova stock. Those are the shares that were paid to the Wimbledon and Stillwater investors whose shares were anticipated to become free traded.

Remember that deal. They gave their assets to Gerova. Hundreds of millions of dollars of assets to Gerova, and in exchange they got stock. They didn't want stock that they couldn't trade. That's pointless. It was part of the deal. The company was going to do a registration statement, all those shares were going to get registered, and in time they would become free trading. That made sense if you were a Wimbledon investor giving up your assets.

Fifth, and most importantly, it's just not true that Hlavsa lacked information that he needed to determine precisely the impact of the Shahini share issuance on the number of shares outstanding and even the number of shares in the so-called public float.

He knew that the shares had been issued and it would not have been difficult for him to obtain and process the information at Continental which would have removed any doubt as to the precise impact of the Shahini issuance on the total pie and every last slice.

At the end of the day the pie image is not really relevant. This is the point. Here is the real point for our purposes. Remember, what is going on in Gary's head? Gary is not withholding information about the numbers. He called attention to the numbers, and Hlavsa had all the information he needed to determine anything he wanted to know about what was going on with the stock.

It's crystal clear from the evidence, if Hlavsa had checked the numbers, as he should have, as he admitted he was bound to do, closer in time to the filing, the second 20-F, he hadn't used stale information, there is no doubt that he would have understood all of this.

You don't have to rely on the notion that Hlavsa could have checked on this information, because he did. He just did it later in July. There is clear evidence in the record that in July, unfortunately after the 20-F was filed -- again, nothing to do with Gary, why it happens in July as opposed to June -- Hlavsa did check this information, and he actually got all of the right data from Continental. He got a complete picture of all the different aspects of the pie, and nothing about any of that information in July startled him, gave him pause or caused him concern.

Let's look at the documents. Let's look at what people actually said at the time. Defendant's Exhibit 822.

On July 14, 2010, Hlavsa asked for the number of shareholders. He asked for it and he got it from Continental.

He next asks "for the shareholder listing for each month in 2010."

Think about this one. He specifically asks for shareholder information for each and every month in 2010 so he can "see the shares as they are issued and canceled."

He has got the right instinct. He wants to see the real time picture. He just doesn't ask for it until it is too late. He got that too. That's Defense Exhibit 348. He got the April 2010 shareholder report. He got the May 2010 shareholder report. He got the June 2010 shareholder report.

And these charts clearly show the jump in the Cede & Co. number. They show the very issuance of shares that Hlavsa, now Gary, "hid from him" by sending the information to Continental and drawing his attention to it.

Here is a comparison. You can see the information lined up.

What is Hlavsa's excuse for this? What does he say? How did he miss it?

Well, he now claims he didn't pay attention to the Cede & Co. number. And we have the transcript on that. It's page 749, line 8 to 20.

"Q. Now, in your role as CFO, is that a number that you would focus on when receiving a shareholder report like this, the number held in Cede?

"A. I did not.

"Q. Why not?

"A. It wasn't part of my responsibility to understand the trading of the shares and how much were in the free trading of the stock price. It just wasn't anything that I either concentrated on nor was it necessary in my position."

What does that suggest? Doesn't that suggest, if Gary had gone to greater lengths to draw his attention, he still wouldn't have focused on it, because for some crazy reason he didn't think it was part of the job as chief financial officer?

That doesn't make any sense.

If he wants to know what is going on with the stock, all he has to do is look into it. And it doesn't make any sense what he is saying now, that he would have wanted to have this information. He had it. It's not credible to say that he didn't.

In fact, Hlavsa even figures out the public float. He gets all the information from Continental. He works through the numbers and he sends the public float number to the CEO, Joe Bianco, and to Mike Grant in early August 2010.

What does he find out and what does he communicate? The exact number. We have 10,989,553 shares in the float. He gets it, it's clear here, because he asked Continental for it. That makes sense.

Notice what is not in this e-mail. There is no, holy cow, I thought there were half as many shares in the public float. There is no reaction at all. It's just business as usual.

Not only does Hlavsa have all the correct totals, outstanding shares, the number of restricted shares in the public float, again, all the pieces of this pie, there is Government Exhibit 609.

Government Exhibit 609, ladies and gentlemen, makes abundantly clear -- it's very important document -- that Mr. Hlavsa, the CFO, was aware of the warrant agreement.

What does he say? "Found all the agreements. I recall that it was trying to be settled for stock, but I am not sure it ever was. Gary wanted to make sure we had it recorded as a liability."

This is early August, several months after the May 27 issuance, and it's several months after the 20-Fs were filed.

Hlavsa and Bianco were communicating about the Weston fee that was paid to Shahini. Hlavsa obviously was looking for documents relating to that fee, and he tells Bianco his recollection. "That it was trying to be settled for stock." This is the Wimbledon fee. This is the fee this case is about.

That recollection was accurate. Again, the e-mails get you closer to the truth than hindsight testimony on the stand.

It was trying to be sold for stock. That's what it says in the warrant agreement. I urge you to carefully look at that document. It says this is a settlement. It's a settlement and pursuant to the terms of the settlement, other conditions, if the stock price goes up, you get stock.

Hlavsa is dead right. Unfortunately, he is only remembering half. And that recollection didn't occur to him out of thin air. It's not in the consulting agreement that he sent around. That doesn't mention settlement. It doesn't mention stock. So it won't fly that all he ever saw was a consulting agreement. It's not true. He knows that there is a settlement and he knows that it's settled for stock, and that's what he says in August to the CEO.

And that's two months after, by the way, at his urging the reference to certain private warrants gets put in the 20-F disclosure. You put those two things together, it's unmistakable. He knows about the warrants. Hlavsa does.

I am not suggesting that Mr. Hlavsa left anything out deliberately. I don't think he purposely lied. I don't think there is any evidence of that. But his testimony, you could see that he was sometimes forgetful and he was sometimes mistaken and when that happened, we tried to refresh his recollection and he looked at documents. He remembered things differently. He changed his testimony several times.

For example, Mr. Hlavsa initially testified that Gary was the only person to send stock issuance letters to Continental. Yet when we showed him documents to refresh his recollection, he acknowledged that Gary and Joe Bianco and he himself, Hlavsa, also sent letters to Continental authorizing issuances. He acknowledged that he was wrong and he revised his testimony.

There were other examples. Remember he didn't remember that he had expressed doubts to somebody about his preparedness for the job of CFO of an insurance company.

No need to go over them all, but the point is his memory of events was not always accurate and sometimes it was the opposite of what actually happened. And importantly, every time that Mr. Hlavsa was confronted with the very information that he now says Gary withheld from him, he now says on the stand, six years later, he doesn't know what it means.

Here is some examples.

He didn't include the 2.2 million fee even though he admitted that he knew about it. But he testified he didn't know why he didn't include it.

Number two, he was told there were private warrants, but he testified that he doesn't know what the phrase private warrants means, what it refers to or where it came from.

Number three, he had the total number of outstanding shares. He was able to figure out the public float. But he testified he wasn't focused on, it wasn't part of his job to think about the Cede number.

In an e-mail we just saw, he said that the Shahini fee was being settled for stock. That was six years ago. But when he came into court, he said I don't know what that means.

And I submit, ladies and gentlemen, if you apply your common sense, there is a clear reason why Mr. Hlavsa's recollection is not always accurate and sometimes the opposite. It's human nature. People generally don't want to be associated with events that turn out badly, and they really don't want to be associated with events that turn out really badly.

And that's what happened with Mr. Hlavsa's testimony. He doesn't want to be connected in any way to the Shahini warrant and the issuance of shares to Shahini. Because those things really didn't turn out well.

After the shares were issued, manipulated by Jason Galanis and other members of his family, together with corrupt investment advisers who willfully broke the law and stole millions of dollars from innocent people, that was a terrible fraud with tragic consequences.

But Mr. Hlavsa did not intentionally cause that fraud. He didn't intend for anyone to get hurt. And because he doesn't want to be associated with any part of those events, he has developed a bias. His bias is to separate himself from the fraud, to shift responsibility. Understandable, it's human nature, but Mr. Hlavsa's bias is not the truth.

The truth is what is in the e-mails, the contemporaneous communications that he sent and received at the time, and those documents show that Gary told Hlavsa about the warrants and the shares.

Now, Gary also provided a detailed explanation to Hlavsa in September. Now we have May, June, August, his own efforts in July, and now we are into September.

His reaction, Hlavsa's reaction to receiving that information, really speaks volumes. These are the Skype chats that you saw during the trial. Government Exhibits 600A, B, C and D.

On the stand Mr. Hlavsa testified that in September, when Gary again told him about the Shahini warrants and issuance of shares, he was, quote, shocked. He said he was shocked and upset because he didn't know about the warrants and didn't know about the shares.

The Skype transcripts -- again, communications that actually happened at the time -- prove the opposite. There is no evidence that he was shocked. There is no evidence that he was upset. He got this information from Gary. Again, the whole picture. Everybody agrees, even the government agrees, at this point there is really nothing about what is going on, where the shares are going, who gets them, that they have been issued, how much they are worth. It's all there. But there is no indication that Hlavsa had any reaction to this other than to say, thanks. He said thanks.

Ordinary course of business. He got the information, calmly reviewed it, and passed it along to others.

Now, you know, based on the evidence that we have reviewed, that Gary did not hide anything from Hlavsa, and he also didn't hide anything from other people at Gerova. The government points to the phone call that they played at least twice during the closing where Gary says, they totally missed it.

Let's talk about the phone call. I am not going to play it again. It's not anything nefarious. It is not. Once again, what you're actually hearing is Gary calling attention to something, something that needs to be addressed.

The call happened on July 28. Again, dates matter. And it's mostly Jason talking. In the jury room if you listen to the whole call -- it is five or six minutes long -- I think Gary utters three words before that last ten. The words are either wow or yes, Jason is a smooth talker, always talking about the company he is going to buy, the deal he is going to do, the person he is going to meet that has got some high position. Jason has got big plans. Gary just says, yes, well. At the end of the call, that's the only time that you hear Gary's voice.

Now, he says he has been looking at a draft registration statement. These are the F-1s. The government wants you to think that this statement is conspiratorial, but again, if you look at the documents, which we are going to do, that doesn't make sense.

Let's look at the F-1s. There are three in evidence. Two from just before this call and one from later.

The two that were before are from July 19, which is Defense Exhibit 810 and July 27, which is Defense Exhibit 811.

As Mr. Blais pointed out, July 27 is just the day before the call. So everybody agrees Mr. Hirst is looking at Defense Exhibit 811.

Now, remember, again, the whole point of the F-1 registration statement is, the reason why it's being drafted, is because the company wants to register over 100 million shares of Gerova stock, which is right now in the hands of the Stillwater and Wimbledon investors. And you have Mr. Hlavsa's testimony on that point, 693 and 694. He told you what the whole point of the F-1 registration statement is, and you can read that.

But it's clear what investors were expecting to happen when those F-1 registration statements were filed. That's why they are getting circulated in July. Those two earlier registration statements don't reference Shahini. You can read them up and down. We had Mr. Hlavsa read them on the stand. There is nothing in there. But there was a third draft that's after the July 28 call. It's the third version of this document that's in evidence.

It's Government Exhibit 602. You saw this during the trial when I asked Hlavsa about it on cross-examination. This later draft includes the fact that Gerova owed a fee to Jason Galanis. It includes a description of the warrant agreement. And it specifically references Shahini. It's all in there.

So here is the bottom line. If you look at the documents, if you pay attention to the words in the draft registration statements, both the ones that are sent around before and the one that we got after, it's obvious what Gary is referring to on the call when he says "that whole Shahini thing, they missed it."

It wasn't in the F-1. It's not in the draft. But it is in the later draft. What does that tell you? It's history repeating itself. The same thing happens in June when Gary got back from vacation. You saw the first 20-F. He noticed it did not disclose the fact that private warrants been issued in payment for the Wimbledon fee. What does the evidence show? Clear as can be. Gary points out the miss to Hlavsa.

The same thing happened in July. That's what the call is about. He is pointing out in this, this. What did they miss? The same thing missed in June.

Just like in June, if you look at the later document, Shahini is in there. The information is in there.

Then there is October. In October, the board of directors reviewed and unanimously ratified the warrants and share issuance after ample time for investigation and deliberation, as I mentioned before, because it's obviously an important fact I will repeat it, the board gave its unanimous approval to the warrants and the issuance of the shares.

Let's pause to consider the board's approval process. You heard a lot of evidence about how the board functions. You saw a lot of board resolutions and Mr. Blais talked about it in closing.

The government claims that by issuing the shares, Gary violated Gerova's bylaws, which required the full board or designated committee to issue shares in advance. There is no credible proof of that assertion. The government relied principally on the testimony of board members and wants you to rely on their understanding of the rules. There is good reason not to do that. Let's talk about it.

One, we showed you the actual documents. The relevant provision from the company's articles of association, which there was testimony. That's like the constitution of the company. It's the core rules that the company has to follow. Defense Exhibit 105.

The article states: "The directors may allot, issue, grant options or otherwise dispose of shares at such time and on such other terms as they deem proper." That is a direct quote.

Now, the articles in effect when Gary issued the shares to Shahini -- that's Defense Exhibit 105 -- that includes the definition of the term directors. What does directors mean?

It says, "The directors for the time being of the company or, as the case may be, the directors assembled as a board or as a committee thereof."

The critical word there is "or." On its face what the controlling document says is the individual directors can issue shares. Or the board acting as a body can do it. But it authorizes individual directors.

Now, you can also think about this question from Continental's perspective, and there is evidence on this too. Michael Mullings again testified that Continental kept a record, kept in its file a resolution that was passed when Gerova was still ASSAC, the predecessor company. And that resolution carried over when the company became Gerova. Continental still had it on file and observed it.

That resolution, which, by the way, was signed by Hlavsa as well as Mr. Hirst and others, authorized Continental to issue shares of the company "as may be directed by resolution of the board of directors or by written order of the president."

That means, and it's clear on its face, that either the board of directors or the president acting individually is authorized to instruct Continental to issue shares.

So you have got the foundational documents, organizational documents, documents filed on behalf of Continental. Now let's look at the company's practice. What did the company actually do?

We know Gary instructed Continental to issue shares. That's clear. Michael Hlavsa testified that both he and Joe

Bianco, CEO, also communicated instructions to Continental to issue stock. So there's your company's practice. The company's practice was for individuals to sign off on these letters. They could and did direct Continental to issue shares that way.

It was also common for the board to approve these issuances after the fact, just as they did in October. As you know, at the October 6 board meeting, the board didn't just ratify the Shahini shares after the fact; it ratified two other issuances of shares after the fact. And that vote, again, is unanimous.

And there is nothing in the record to suggest that anybody at the board meeting or the outside counsel who was advising the board thought to question the practice at that time or any other time. There is just no credible way to suggest that Gary lacked the authority to enter into the warrant agreement.

We showed you the minutes, the other documents relevant. We showed you the minutes of the extraordinary meeting of the shareholders. That's Defense Exhibit 106, from January 2010. That document specifically names Gary Hirst as an authorized signatory for the company and specifically authorizes him to sign the Wimbledon agreement and "any ancillary document." That means -- you can read the documents for yourself, but any document that supports the agreement that's referenced.

The shareholders also approve the resolution authorizing anyone who is designated as an "authorized signatory," which included Gary, to issue up to 175 million shares based on any ancillary document related to the Wimbledon deal.

You also saw language, which was read aloud during the trial, that Gary Hirst was authorized to do "all such acts and things that might in the opinion and absolute discretion of the directors or any attorney or authorized signatory deemed necessary and desirable" for the purposes "of consummating or completing the transactions contemplated by the Wimbledon agreement."

Remember, the warrant agreement takes care of, settles the fee, that was paid in connection with the Wimbledon deal.

So all of this, in plain English, means in January 2010 the shareholders of the company specifically voted to give Gary Hirst the authority to enter into any agreements related to the completion of the Wimbledon transaction, and they gave him discretion to determine what agreements were necessary and desirable. That's what they gave him.

All that evidence, the actual words of the articles, the shareholder resolutions and the other documents we reviewed, proves that Gary had the authority to sign those documents.

Again, ladies and gentlemen, it goes back to where we started. What is going on in his mind? Has he formed a criminal intent or is he acting in good faith?

Good faith, the judge will instruct you, acting in good faith is consistent with bringing things to people's attention, disseminating information, pointing out when things aren't done properly, and doing what you are authorized to do by a resolution of the shareholders of the company.

Now, the government would prefer just to rely on Hlavsa and Doueck's recollection six years after the fact of how the rules work, but that doesn't make sense. You have the company's documents and the meaning is plain.

Today, six years later, Hlavsa and Doueck say that their understanding was that the board had to approve -- board -- had to approve all share issuances. In fact, Jack Doueck testified that his "understanding was the board had to approve." He also testified that he never reviewed the bylaws or other written documents of the company. In fact, his testimony was:

"Q. Were you aware of whether or not Gerova had such rules?
"A. No."

He didn't even know that they had rules. How can he come here and credibly testify as to what the rules were?

Unlike Mr. Doueck, you have now reviewed the relevant documents. You know the rules that govern the company. You can look at those again in the jury room when you're deliberating. And those rules make clear that Gary Hirst was authorized to execute the warrant agreement, among other things.

The board's ratification of the Shahini warrants and shares was also consistent with another document I want to talk about, the January 2011 letter from the company to the New York Stock Exchange. Let's look at that.

At trial we showed you multiple versions of the document. We wanted to make sure that you saw all the drafts. These drafts were the product of input by any number of people. They were a joint effort and many hands contributed to them.

The first one we looked at was sent from Steve Weiss's personal e-mail account. Steve Weiss, again, is the lead partner at the firm that's advising the company. His private e-mail address is bigshmulic@aol.com, and he sends a draft to Bianco. So this is just between Weiss and Bianco. This is before everyone else is chiming in. But they are having a private drafting session.

Subsequent drafts were circulated to a larger group which included Jason Galanis and others.

You see that quite often. Jason Galanis participates in commenting on drafts. He is present at board meetings. He's all over the place. And again, no one thought that there was a problem with that, including the lawyers.

Anyway, the subsequent drafts get circulated. Michael Hlavsa himself commented on one. That's Defendant's Exhibit 209. And you have all those in evidence.

The final version of the letter to the New York Stock Exchange in January 2011 is completely consistent with the board's approval of the Shahini warrants and the shares in October 2010. Everybody who participated in preparing that letter to the New York Stock Exchange understood and agreed that Jason Galanis was entitled to a fee for introducing, among other things -- and it says it right here -- the Wimbledon deal.

They understood and agreed that that fee was paid to someone else, described as Jason's assigns. That's an assignment. And the payment to Jason's assign, namely, Ymer Shahini, was connected to a partnership that Jason had with him that wasn't related to Gerova. There is nothing improper about that.

More importantly, the evidence shows that the folks who knew about it -- Weiss, Bianco, Hlavsa -- and who had accurate information about what really happened and who put it in the draft and put it in the final version and then sent it to the New York Stock Exchange, they were fine with it.

Today, none of them wants to have anything to do with it, for the same reason that Mr. Hlavsa has his bias. He doesn't want to be associated with events that turned out as badly as these did. But the documents show that at least as to this question of the assignment of Jason's fee, there was no mystery. Everybody knew about it. Everybody was fine with it.

Now on a side note, some witnesses suggested that Joe Bianco may have introduced Weston to Gerova. The government makes a big deal about this. Who actually did the introduction? You heard Albert Hallac, the founder of Weston, took the stand and testified, and he told you that he came to Gerova through his prior relationship to both Bianco and Galanis. That's how Hallac came into the picture. And obviously Joe Bianco had no problem with Jason getting the fee. He is on the drafts of the January 2011 letter. He is at the board meeting. This is no mystery to him. And, if you ask the person who owned Weston who took the stand, he has clearly got a relationship with Joe Bianco that goes back.

He might have said, I, Bianco, want that fee, that should be mine. I'm the one who brought Hallac and Weston to the party. But that's not what happened. Right? You know Joe Bianco was OK with it and you know because Hlavsa told you that when he talked to Joe Bianco about this after the board meeting, Bianco said, hey, this transaction makes sense. It's economically good for the company. That's what Joe Bianco said, a person who is probably in the best position to know what anybody did in terms of introducing this Wimbledon deal.

OK. So again, from all of this evidence we have been talking about, clear as be, Gary didn't conceal anything from anyone. Nobody is in the dark.

Now, let's look at the evidence that Gary Hirst did not backdate any documents.

In its opening the government told you that Mr. Hirst and others backdated documents and you heard again it again today.

Let's first talk about the consulting agreement. The government didn't present any credible evidence that Gary Hirst came up with this agreement, signed it, or in any way knew about it before June of 2010. There is no good evidence of that.

Now, the document on its face appears to be signed by Marshall Manley, who took the stand. He denied signing it. He also testified "he is not a careful person when he signs documents." That's at transcript 318.

Mr. Hlavsa testified that he specifically met with Mr. Manley for the purpose of asking him whether or not he signed the consulting agreement. And Mr. Manley told Mr. Hlavsa that he did in fact sign it.

Now, Hlavsa also testified that Manley said that Gary Hirst had instructed him to sign the consulting agreement. Now, you saw Manley on the stand. You have to ask yourself whether that's plausible. This is a take-charge guy. This is a man who really has his own mind, and he is about to become

CEO and chairman or vice president of this company which, by the way, has no money and he knows it. Is it really plausible to suggest after the fact that he signed that document given what he was responsible for at the time and what he knew about the company's financial condition without looking into it himself and satisfying himself that it was the right thing to do? Or did he do it because Gary Hirst, who he didn't really know, told him to? It's not plausible he would do that just because Gary told him to.

Then there is the warrant agreement. Gary signed it, and the evidence shows that he signed it in late March. That's what it says on the face of the document and that's what the metadata tells you. The metadata shows that the document was scanned on April 9, 2010. So it could not have been created in May and backdated to March.

Now, you heard from two experts about this and although one testified for the government and one testified for the defense, they basically said the same thing. They told you that metadata is data about data. It's basically information that's generated by the computer and added to the file. And when you create a PDF document, whether by scanning it or creating it on your computer, it gets a create date from the computer and it lives with the document. It's in the metadata. It stays there.

Both the experts viewed the metadata using forensic tools and both the experts -- Mr. Flatley from the FBI and Mr. Shumway from Stroz Friedberg -- observed that the metadata showed that April 9 create date.

This is hard data, forensic evidence, showing that when the document was scanned, the computer that scanned it gave it a particular time stamp. And it's evident that it was scanned about ten days after Gary signed it. It was scanned about a week and a half later.

Now, that's an inconvenient fact for the government because their theory doesn't work if the document was actually signed in late March. The government has argued that the consulting agreement and warrant agreement was executed only after the stock price went up. And that's why the government put a witness on the stand for the purpose of undermining the evidence of the metadata. That's why the government's witness Mr. Flatley testified the FBI doesn't trust metadata. But the fact that it's theoretically possible to manipulate the metadata doesn't mean that it was in fact manipulated.

On this point both experts agreed. The government's expert testified that nothing about his forensic analysis indicated that the create date in the metadata was wrong. And he testified that nothing in his analysis showed that the metadata had been intentionally altered.

Our expert, Mr. Shumway, said as well that he found no evidence that the metadata had been altered. Mr. Shumway gave you additional good reasons to trust the create date. He said that that date is internally consistent with the create date that is stored in other containers of metadata that travel with that same document. And those containers were created either by separate programs or by different versions of the same program. That sufficiently complicates the picture.

It's also consistent, according to Mr. Shumway, with the software protocol that was in use at the time, April 2010. So it's consistent with what was actually going on in the world in terms of the computer programs that were used to create this kind of metadata.

And he found something else in there. Deep in the metadata he found a title, partnership underscore agr underscore Balkan. You remember from the draft F-1 that we looked at, Government Exhibit 602, Balkan Hellenic is the partnership that Jason Galanis and Ymer Shahini were in together, as reported in that draft. It's also the partnership that's referred to, although not by name, in the January 2011 letter that's sent to the New York Stock Exchange.

That's all consistent with what the board understood was happening, and that's all consistent with what the company reported to the New York Stock Exchange and was drafting in their public filing.

Now, again, it's hypothetically possible that this metadata was altered or that the computer clock was set to the wrong time. But, again, we ask you to apply your common sense. There is no evidence of manipulation of that metadata, and Mr. Shumway told you that sometimes that's what you see. Absent any evidence that the metadata was manipulated, it was reliable, direct evidence that the warrant agreement was created on or before April 9.

By the way, if you're going to set back the clock on your computer or use a program to alter the metadata, why would you backdate it to ten days before? Why not backdate to the date it's supposedly signed.

The metadata evidence, ladies and gentlemen, is devastating to the government's case against Mr. Hirst.

So what evidence is the government pointing to that the warrant agreement in particular is backdated given that the metadata shows that it's not? They have one piece of circumstantial evidence. Government Exhibit 1004. That's the e-mail from Derek Galanis to Shahini in late May that says, "This is where you come in, my friend." You heard about this from the government's closing.

The government claims this exhibit shows Shahini didn't join the scheme until late May. So he couldn't sign warrant agreement in March.

Let's look at the public filing from 2008 of the other company Hlavsa was also the CFO of, Fund.com. This public filing and formation of that company. It shows that Shahini was a major shareholder of Fund.com, which remember you heard testimony that Jason Galanis also was the financial engineer and motivating cause and controlled Fund.com. It's another Jason Galanis company. Mr. Hallac told you that.

So you also saw multiple e-mails between Shahini and both Derek Galanis and Jason Galanis from 2009. That's Defense Exhibit 1701. Shahini is working to put together deals before Gerova was even Gerova. Despite this evidence, the Fund.com filing and the e-mails from 2009, the government claims that it's one May 2010 e-mail, which your common sense tells you and all the evidence tells you is wrong, it's not the whole story.

Shahini was in the mix with the Galanises. He is more than 5 percent beneficial owner of Jason's other company Fund.com. He is exchanging planning e-mails in 2009 with the other Galanis brothers.

I urge you also to look at Government Exhibit 1014. This is a 2010 e-mail between one of the Galanis brothers and Ymer Shahini. "You make sure on your end and I will do everything on my end as always." Think about those two words, "as always." This is not something they are just getting off the ground now. This isn't something that just occurred to them. They go way back. They have been working together for years and likely seen together.

When you weigh the evidence of backdating -- the government's ambiguous e-mail on the one hand with the metadata on the other, combined with all the evidence showing that Shahini's prior involvement -- it's clear that there is no good proof that the warrant agreement was backdated. Certainly not proof beyond a reasonable doubt. To the contrary, the evidence shows that that date is good.

Now, you know that Gary did not conceal anything. You know that he didn't backdate the agreements.

Now let's talk about the money. He didn't get any money.

In the opening the government made bold claims and said Mr. Hirst was using Gerova as his personal piggy bank. And they claim that Mr. Hirst got $2.6 million. But the government on this score was just wrong.

Now they are trying to tell you, no more personal piggy bank. They are saying that he used money from the Shahini account to pay back an obligation of a business that he was associated with.

What really happened with the money doesn't just show you that the government got it wrong. It shows that Gary Hirst is not guilty.

It's undisputed that on June 22, 2010, 2.6 million gets wired to Taurus and then to Pennine and then to Weston, and that Weston -- remember, that's the fund that's owned, and at this time he actually sold it, but it's managed by the government's own cooperating witness Albert Hallac. On that one day the money very briefly flows through these accounts, two of which Gary is a signer on, and then it goes back to Weston, goes back to Hallac. And that's it.

The testimony is very clear. 2.6 million is the second installment of a repayment of a $5 million investment that Hallac had made in the Global Asset Fund. The testimony is also very clear that that transaction, that $5 million investment -- the money goes Weston, Global Asset Fund, back to Weston, every penny, by the way -- that's a deal between Hallac and Jason Galanis.

Hallac is crystal clear in his testimony. It was an investment for Jason. And he was also clear that he only communicates with Jason.

On direct, Hallac testified at page 1168:

"Q. How did that investment come about?

"A. I got a call from Jason Galanis asking me if I had some available cash in one of our offshore funds if I would be able to invest in Mr. Hirst's fund called the Global Asset Fund."

Then when he wanted conditions for the investment. Again, he spoke to Jason, not Gary.

"Q. Now, what, if anything, did you request in return for making the investment?

"A. In view of the fact that the request was to make an investment quickly, we had no chance to make any due diligence on the fund or to know what he was going to do or not do. So I asked two particular things from Jason, which was, number one, no matter what happened, we would have to get our 5 million back, and, number two, they would have to waive the period of redeeming shares."

Now, on cross his testimony again was clear. This is Hallac, and he said he only dealt with Jason. This is page 1208 of the transcript:

"Q. There came a time when you agreed with Jason Galanis to make this an investment, correct?

"A. Yes.

"Q. And that was the Global Asset Fund, right?

"A. Yes. That's what he asked me, Jason."

"Q. He asked you to make a $5 million investment in a fund and you agreed, right?

"A. Yes."

Other than getting Keith Wellner and his Swiss bankers to send paperwork to Gary, there is no testimony or evidence that Hallac ever talked to Gary about this investment.

In April, the testimony and documents are clear. Hallac wants his money back for Weston. And 2,275,000 is promptly wired back to Weston.

Then on June 3, Hallac requested the balance of the 5 million, and Soc-Gen sent a formal redemption request. Albert wants the rest of his money back. What does Gary do? Forwards the e-mail to Jason with note. "Weston redemption request for

May 31."

Why does Gary forward that to Jason? Hallac told you why. This is a deal between Hallac and Jason. Hallac never spoke to Gary about it. Gary also forwards the e-mail to Jason because at that time Jason was working with Arie Van Roon, who had taken over Pennine. And the contract that governs here is Defense Exhibit 1250. You also saw the document showing that Van Roon took over Pennine in February 2010 during the testimony of both Paul Hinton and Jan Goleszewski.

Within minutes of receiving a redemption request from Gary, Jason responded. What does he say? Jason says, "Master Trust I suppose in a few weeks." Defense Exhibit 1142.

What does that mean? Jason is telling Gary the redemption will be paid using the proceeds of another deal, which was the acquisition of a company called Master Trust. And Gary anticipated that the deal would close in a few weeks.

Now, you heard testimony and you saw documents that told you about Master Trust. Jason had been looking at Master Trust in an acquisition for Gerova initially and later he pursued it on his own.

Jack Doueck testified that he was familiar with Master Trust. Here is the testimony through Jason talking about it.

"Doueck testified that Jason was pursuing the deal for liquidity, for cash. And that Jason ultimately pursued the deal on his own without Gerova."

That is what Jason Galanis was telling people at Gerova for months, that he had a lead on the Master Trust deal and it was going to be a cash rich deal.

He didn't just tell Doueck. He told Gary and others.

Look at Defense Exhibit 1126.

(Continued on next page)

MR. TREMONTE: (Continued) He told Gary that Master Trust was doing 2 million a month in business that would be "enormous for Gerova". Again, he's looking at this target for cash.

Looking at Defendant's Exhibit 1127. Jason told Doueck and Doueck's Stillwater partner, Rick Rudy that Master Trust had 475 million euros, of which 30 million was redeemable in liquid. Again, he's telling people -- Jason is telling people -- I'm doing this cash deal.

Defendant's Exhibit 1144. In May of 2010, Jason was telling Rick Rudy and Joe Bianco now that he was shifting his focus to the Master Trust deal. Why? Because that's "where the money is".

Again, thinking about what's in Gary's head is the same as what's in everybody else's head. He's talking to Jason. They all believe that Jason was pursuing this liquidity deal at Master Trust.

Go back to Defendant's Exhibit 1142. Again, you can see that. So when Gary told Jason -- back to the cash issue, right? When Gary told Jason that Weston wanted the return its 5 million, Jason said, "The money's coming from Master Trust in a few weeks," and from Gary's perspective, again, what's in his head, that makes sense. Nothing wrong with that.

Then, a few weeks later, just like Jason said, on June 22nd, 2016 -- timing is important -- just like Jason told him, the money arrives. And what does Gary do? Does he put it in his pockets? Is it a piggy bank? No. He sends it to Weston. He redeems the investment. So there was no personal piggy bank.

Defendant's Exhibit 901E. He sends it back in full and final payment. The money ends up in Hallac's account. It never, ever ended up in Gary's hands. He didn't get any money.

Hallac told you that. Page 1211 of the transcript.

"Q. That money did not end in the hands of Gary Hirst, correct?

"A. No. Hallac should know. The money went back to his client."

There is no evidence that the funds sent by investors into Pennine were investors that Gary was personally liable for. Again, this is inconsistent with the government's theory. Yes, Gary was a signatory on the account, but we showed you documents to prove that Gary had resigned as a director of Pennine, transferred all of his management shares, and four government witnesses -- Professor Laby, Hlavsa, Hallac, and Hinton all agreed, being a signatory on an account does not mean that you own the funds in the account. I'm almost certain the government is not going to get up in rebuttal and suggest to you that he did. You heard lots of testimony on this. When you run a fund, you don't own the money. It's not yours. He was a signatory on the account. There's no money that ended up in Gary Hirst's pockets.

At the end of the day, I'm not sure it matters that much who owned what in the account, because even though the money came from a brokerage account in Shahini's name, as you saw, there's evidence of that -- right? It's not in dispute -- there is not one document, not one word of testimony, no evidence of any kind that Gary Hirst knew that the $2.6 million that he sent back to Weston came from Shahini.

You can examine those bank records and the wire transfer documents and the testimony all you want, but please do so because you will never find any hint, not one iota that Gary Hirst knew where the money was coming from.

Remember the chart the government showed you? The first page of Government's Exhibit 910? Here it is. Mr. Hinton clearly acknowledged that this chart cannot tell you what was in Gary's head. Mr. Hinton could draw all the arrows in the world connecting lots of boxes, because he, Mr. Hinton, had access to the Shahini account statements. Hinton had that. The government's witness had that information. Gary didn't. So you should ask the question, what would you know if you only had the Taurus account records and the wire details? Those details are in evidence, Government's Exhibit 910. Mr. Hinton, the government's witness, agreed, if all you had was that information, you would have no way, no way of knowing that the $2.6 million was coming from Shahini.

Now, we looked at the Taurus account statement, that's

Government's Exhibit 412, there's nothing about Shahini there. We've looked at the wire statement, Government's Exhibit 427, nothing about Shahini there. Again, what does this evidence or the absence of evidence tell you? Mr. Hirst doesn't know that the money is coming from Shahini.

You heard Mr. Hinton's testimony in agreement that page 1293 -- what did he say? He said, "You would need more information to know where that money is coming from. I'm not sure who they would have to communicate with."

Gary did get other information. He got an email from Jason that said he was getting the money from Master Trust and he was going to get it in a few weeks. All right? That's what the evidence shows. That's all Gary knew. There's no proof to the contrary. You can't be guilty of getting illegal proceeds unless you know that those proceeds are coming from an illegal source. Gary did not know that. This is what he saw. He saw Master Trust. That's the green box. He didn't see Shahini.

So forget about the personal piggy bank, forget about the fancy tracing charts that the Brattle Group got paid $200,000 to prepare, forget about the notion that illegal funds were somehow used to pay a personal obligation of Gary Hirst.

The government has said, well, it doesn't matter if you think he got his money because there's no element that requires the government to prove that he did. He can commit securities fraud or wire fraud even if he didn't get anything.

And that is true as a matter of law. You can commit these crimes without getting money. But it doesn't make sense, and I urge you to consider at least two reasons why it doesn't.

First, the government wants you to believe that Gary Hirst participated in this vast complicated criminal conspiracy where there were tens of millions of dollars in potential spoils as a favor, out of the goodness of his heart. That doesn't make any sense. That's not consistent with the facts.

Number two, if Gary was in on the Shahini deal, there would be no reason for Jason to tell him the money was coming from Master Trust. Right? Gary would say, oh, here's a redemption request. You've got to come up with 2.6 million. And Jason would write back "Shahini," I suppose. But that's not what he wrote back, he wrote back "Master Trust". And that's another very, very strong indication that there's no conspiracy between Gary Hirst and Jason Galanis.

Now you know what Gary did. He acted in good faith, he didn't conceal anything, didn't backdate any documents, and he didn't get any money, and that's all you need to know to find Gary Hirst not guilty. But let me briefly touch on other parts of this case; the matched trading, the investment advisor fraud, and the deception of innocent investors.

These are awful crimes, as I've said before. We don't for one minute underestimate the tragic losses that were suffered by Dr. Cole and Mr. Kram's families.

I mentioned at the beginning that there is no evidence of Gary's involvement in those schemes. Those were the crimes of Jason Galanis and others. Gary had nothing to do with the brokerage account at CK Cooper. Indeed, there's no evidence that he even knew about that account. He had nothing to do with the matched trading. He didn't talk to Gavin Hamels, as you heard. Jason didn't even mention Gary Hirst to Gavin Hamels, and Gary had no contact with the Coles or the Krams at all.

But even though Gary had nothing to do with any of this, the government argues, and the Court will instruct you, that if you find that Gary knowingly joined the conspiracy, he can be held responsible for the reasonably foreseeable acts of others even if he had nothing to do with them. So the key becomes "reasonably foreseeable".

In his closing, the government alluded to the fact that, because the public float was so small, Gary must have known that market manipulation would have had to take place for the shares to be sold. That because of this, everything that came after, all the terrible acts that Jason and others committed, it was all foreseeable to Gary. But the government is forgetting that when Gary signed the letter authorizing the issuance of the shares, everyone then contemplated that the company was preparing to file a registration statement which would flood the market with unrestricted shares. We talked about this before.

You'll also get an instruction from the Judge on Regulation S. Remember, Regulation S is an exemption from the registration requirements for a foreign holder of shares, and that law prohibits a foreign holder from selling Reg S shares into the United States market for a period of time. Reg S shares can't be sold domestically.

Now, if the registration statement had been completed and not held up with problems because of the Stillwater audit, as you heard, even the Shahini shares would have been registered and could have been sold perfectly legally, just like all the other shares that were going to become subject to that registration statement.

So not only is the premise, the assumption made by the government wrong, but what actually happened is just such an unlikely combination of events that it's really almost absurd to call it foreseeable. Right? That it's something that he could have imagined rationally would happen.

Indeed, the Barry Feiner letter that Gary saw and forwarded to Continental specifically represented that the terms of Reg S would be complied with. So that's a representation from Shahini's own lawyer. Was it foreseeable that he would break the law?

The brokerage account statements. You saw the brokerage account statements the shares actually went into.

Those brokerage account statements had a designation next to the share listing. It said "Reg S". Right there on the face of the brokerage account, they were subject to Regulation S.

Again, you heard from Professor Laby. It's legal to hold Reg S shares in a domestic brokerage account even if you can't sell them in the United States. But there was no way that Gary Hirst could have foreseen or should have expected that the professionals at those brokerage firms would be ignorant or confused about Reg S, or that they would simply violate the law, as happened in this case.

You heard the testimony of Ms. Akdeniz and Mr. Montano, the two brokerage firm employees. Ms. Akdeniz testified on direct that she believed Reg S shares could be freely traded. It was only on cross examination that she admitted that they could perhaps be freely traded abroad, but not here. Still, after closing the Shahini account, what happened at Ms. Akdeniz's firm? They simply transferred the shares to another domestic broker.

Mr. Montano, he was in charge of CK Cooper, and you heard his testimony. He also did not have an accurate understanding of Regulation S. He did not know that the shares bearing that designation couldn't be sold on the U.S. market. How could someone in Gary Hirst's position foresee that the shares would end up in the hands of somebody who wanted to break the law and put in a U.S. brokerage account run by people who didn't know what Reg S meant?

The folks at CK Cooper actually did something else that was totally unforeseeable, ladies and gentlemen. As Mr. Montano had to concede, it was also totally foolish. They margined $13 million. They gave a $13 million loan against the Shahini shares, even though Gerova stock had very little history of being publicly traded, and even though the shares were subject to Regulation S. Mr. Montano admitted that this was a very, very risky proposition and, in fact, it was worse than risky, it was reckless. It was nuts.

Having made that decision, which made no business sense whatsoever, CK Cooper called in a margin loan. They said now we want you to pay it back. It's too -- we thought about it, it just doesn't make any sense. They forced the sale of the shares. Think about that. A brokerage firm wants their money back, they realize they made a stupid decision, and what do they decide to do? Break the law.

THE COURT: Mr. Tremonte, you have seven minutes left.

MR. TREMONTE: Thank you, your Honor.

That was not something that Gary Hirst could have foreseen. There's no way that Gary could have foreseen the scheme that Jason concocted with Gavin Hamels. Gavin Hamels was forced into a deal with Galanis because of a desperate situation his firm found itself in with a totally separate entity called Westmoore, and it's only because of these particular circumstances utterly contingent and unknown to Gary Hirst that Hamels ended up engaging in matched trading to save his business, which pumped up the price of the stock before the Galanis brothers engaged in a big selloff.

How could Gary have known that Jason Galanis' father would impersonate his lawyer's son, Jared Galanis, to direct Gavin as to exactly when he should sell the stock? That's just totally beyond the payoff. That's not foreseeable. Not only would it have been impossible for Gary to have foreseen those particular circumstances, the documentary evidence shows that he had no idea what was going on with the stock price and why it was dropping precipitously.

Right after the issuance, the stock price continued to go up, and then when it did decline, Gary had no reason to believe that it had anything to do with fraud. Just like Jack Doueck, Gary Hirst believed the problem was short sellers. What did Gary Hirst do? You have this in evidence, and I'm going to summarize it quickly. It's Defendant's Exhibit 1000, 1001E, and 1001B. I urge you to look at them.

Gary Hirst actually came up with a plan, which the outside lawyer called Gary Hirst's poison pill. There's evidence in the record that he bought books on how to defeat short sellers. Why did he do that? Because he thought that short sellers were tanking the stock, not that it was going down because of fraud.

Here in this case, the fact that Gary is not involved in any way, shape, or form with acquiring or disposing of the shares certainly makes it less likely that he was a knowing participant in the conspiracy at all. He didn't know about the market manipulation, and he certainly didn't foresee it.

He held onto his shares. You saw the Continental chart from August of this year, Defendant's Exhibit 302. He still owns those shares now. Those shares in 2010, at their peak, were worth almost $5 million. Now, they are worthless.

As we told you in our opening, what happened after the shares were issued are entirely separate crimes, and those are the crimes of Jason Galanis. He concocted schemes unrelated to the share issuance, and totally unbeknownst to Gary. He duped Gary, just like he duped everyone else.

Now you know that Gary Hirst did not conceal anything, he did not backdate any documents, and he did not get any money. So what does it ultimately come down to? What is the bulk of the government's case? They have Hlavsa asserting a vague desire to have more information despite all he knew and should have known, they have the theoretical possibility that the metadata could be wrong, even though there's no evidence of that, and they have a coincidence between the Shahini shares and the Manley shares, which I think we have completely debunked.

Ladies and gentlemen, even together, even if you credit those things, which there are good and sufficient reasons I suggest you should not, those things don't make proof beyond a reasonable doubt. Vague desire, plus a theoretical possibility, plus a coincidence is not proof beyond a reasonable doubt.

The government followed Hlavsa's bumbling without verifying whether he was doing his job, they let Hlavsa advocate responsibility when he had all the information that he needed, they let Jack Doueck get away with not remembering anything, they bought the lies of Marshall Manley and Albert Hallac, they didn't scrutinize the evidence, but please, ladies and gentlemen, I urge you, do not make the same mistake. We've gone over so much of the evidence, there is more, and all of this shows, as I said to you, Gary Hirst didn't hide anything from anybody, he didn't backdate any documents, and he absolutely did not get any money.

If you go back into the jury room and carefully scrutinize the evidence, I suggest you'll come back with the only verdict that is consistent with what's actually there with the reliable, credible evidence, and that is, Gary Hirst is not guilty. Thank you.

THE COURT: Thank you, Mr. Tremonte.

Ladies and gentlemen, your lunch is here. We're going to take 30 minutes for lunch. What happens after the 30 minutes? The government, the only party that bears the burden of proof in this case, is allowed to deliver a brief rebuttal summation, it will not exceed 30 minutes, then I will deliver my instructions on the law to you, and then the case will be in your hands.

We might go over by a few minutes today. I hope not, but if we do, it's only to get this case in your hands in a timely fashion. Enjoy lunch. See you in 30 minutes.

(Recess)

THE COURT: Bring our jurors in.

MS. HARRIS: Your Honor, may we just go on the record for ten seconds briefly?

THE COURT: Yes.

MS. HARRIS: We just want to -- we feel we may have neglected to do so at the close of the Defendant's case, renew our motion pursuant to Rule 29, the legal sufficiency of all four counts of the indictment.

THE COURT: Thank you.

MS. HARRIS: Thank you.

THE COURT: Bring our jurors in.

(Jury present)

THE COURT: Thank you, ladies and gentlemen, for being so cooperative. I really appreciate it.

Now Ms. Aimee Hector may deliver a brief rebuttal on behalf of the government.

Whenever you're ready.

MS. HECTOR: Thank you very much, your Honor.

Ladies and gentlemen, the argument you just heard from defense counsel that not only did Gary Hirst not know of and participate in this fraud, but that he was a good corporate citizen trying to shed light, to place a spotlight on important information that needed to be disclosed to the public, putting it up on a billboard so that everyone was aware, is preposterous. It flies in the face of all of the evidence that we have put before you over this last two weeks, and it flies in the face of your common sense. It defies logic, it requires you to suspend disbelief, to disregard every witness that you heard, and to believe that the coordination between the shares that were canceled by Mr. Manley and those that were issued to Ymer Shahini was a mere coincidence. It's not true.

The defense has made various arguments to you, now it's our opportunity to respond to them. Before I do that, let me just be clear about one thing. The burden at all times is on the government. The defense has no burden. And even now, after he's made arguments to you, he still has no burden.

But once the defendant does make arguments, it is appropriate for us to respond, and it is appropriate for you, when you consider those arguments, to scrutinize them, to hold them up to the light of day and see if they hold water, if they comport with what you understand the evidence to be and with your common sense. And I suggest to you that when you do that, you will conclude that the arguments do not show that Mr. Hirst was innocent of this crime, and that the evidence shows that he was unquestionably guilty of this crime.

The defense has argued that the warrant agreement was not backdated and that the defendant believed he was participating in legitimate business activities when he signed the warrant agreement and when he caused the issuance of those shares. Mr. Blais has already gone through all of the reasons that you know that that warrant agreement couldn't have been executed on March 29th, 2010 when it is dated. It makes no sense. The purpose of that agreement was to cover up what had happened and to capitalize on the runup of the stock that goes through them.

I'm not going to go back through all of that evidence for you, but I want to focus you on a key moment in time in this case, because I think if you focus on that key moment, it puts the lie to the story, and that is what it is, a story that the defendant has just told you. It puts a lie to the arguments that they have just presented to you for the past two hours, and that time period is June, 2010.

Let's start with what Gary Hirst knows at that time, because they have asked you to think about what's in his head. What is in his head? It is beyond dispute that he has just a few weeks before asked Continental to issue 5.3 million shares to Ymer Shahini. He argues that that was completely transparent, that that would have been known to everyone because it's in the files of Continental. That's ridiculous. You learned that no one knew about that. But the defendant knew about that. The defendant knew at that time in June, 2010, that that's what he had done. He claims that he thought it was a legitimate payment to a fee owed to Jason Galanis that he had assigned to Ymer Shahini. That's what they just argued to you.

What happens in June? Mr. Hlavsa is working on that 20-F, an important public filing that's going to be filed with the SEC, and he's tallying up the costs of those acquisitions. Mr. Hirst sends an email to Mr. Hlavsa, and that's Government's Exhibit 613, and we're going to pull that up on the screen for you. What does he say? He says, "I want to make sure that the 23.5 million includes the finder's fee for the Wimbledon transaction." And how does Mr. Hlavsa respond? That's Government's Exhibit 614. Mr. Hlavsa says, "There's no fee included for Weston. I would need the agreement. I don't have it." Clearly at this moment, Mr. Hlavsa has no idea that there's some sort of fee associated with the Weston transaction. He has no idea.

What is in Mr. Hirst's head? He knows that, frankly, that fee has already been disposed of by the issuance of 5.3 million shares of stock. Free trading stock. That's deception, ladies and gentlemen. That email from Gary Hirst to

Michael Hlavsa at the time that he had already caused the issuance of over $70 million worth of shares, that's deception. He knew this was important information to the CFO, who was busily preparing the filings for the company, and he withheld that information.

This is important, ladies and gentlemen, because even if you buy the defense argument that, in fact, the warrant agreement had been done in March -- which you should absolutely reject for all of the reasons that we have already described -- but even if you accept that, this is still deceptive, this is still withholding material information from the company's CFO, and that's what Gary Hirst was doing.

Then you learned that Mr. Hlavsa gets the consulting agreement. When he's at the offices of Hodgson Russ, Steve Weiss comes in and says, "Gary Hirst wants you to have this." That's essentially what happens. And Hlavsa calls Hirst because, despite this argument that Mr. Hirst was trying to make sure that this entire thing was transparent to Michael Hlavsa, Michael Hlavsa is confused. Who is Ymer Shahini? Why is someone in the Czech Republic getting a consulting fee? Why am I just getting this document now in June that supposedly was done in January?

So he calls up Mr. Hirst to find out if it's legitimate because, you know what? It smells fishy to Michael Hlavsa. What does Gary Hirst say on that call? Two things.

He says the agreement is legitimate, and he also says something else that's very important, he says Ymer Shahini, in fact, provided those services. That was Michael Hlavsa's testimony. Those are flat out lies. Even if you accept what the defense is suggesting, that Mr. Hirst believed that there had been some assignment, that it was originally an agreement to provide money to Galanis and it was assigned, et cetera, he is lying to Michael Hlavsa right then.

Gary Hirst had an opportunity during that conversation to tell Michael Hlavsa about the shares, about the shares that he just issued, and what does he do? He does not tell him. He is hiding this information for a reason, ladies and gentlemen, because he is in on this scheme. That's why he's hiding it.

If he truly believed that Jason Galanis was entitled to the fee and had been assigned to Ymer Shahini, why didn't he say that? When Hlavsa is saying, "I don't understand this. I've never heard of this guy," why wouldn't Gary Hirst have said, "Well, this is the situation." He didn't say it because it's not the truth. He was hiding the truth because he knew that these shares were issued to line the pockets of his coconspirators and himself. And he knew that information was material.

Look. He's in this email saying, "I want to include this information. I want to include this $2.2 million." You know what? It's not $2.2 million anymore, ladies and gentlemen, it's over $73 million worth of stock -- excuse me -- I think over $72 million worth of stock. If he wanted the 2.2 in, he surely would have wanted the 73 in.

Then Gary Hirst approves new language. He approves new language for the 20-F, and that's the next document. This one is a little hard to read, but you can see on June 15th, there's some new language for the revised 20-F. This language includes the reference to "other private warrants".

Now, during the defense summation, they said Gary Hirst added that language. There's frankly no evidence as to where that language came from. But is that accuracy? Is that transparency? Or is that sowing the seeds of a coverup.

Gary Hirst knows at this point that the shares have been issued. The paper on the warrant, that doesn't even -- it doesn't even exist anymore. The warrants have been exercised and the shares have been issued. So when he's adding that language "and other private warrants", that's not shining a headlight on the truth of what's going on, that's Gary Hirst planting the coverup. That is Gary Hirst again lying to the CFO, Michael Hlavsa. This is deception by half truths. This is a cover story that Gary Hirst is planting.

For all the reasons that you've already heard, you know those warrants never even really existed. That was done by the defendant and his coconspirators to paper over the fact that they just caused the issuance of 5.3 million shares to themselves. To themselves through the foreign nominee, Ymer Shahini.

Then he kept his secret. He kept his secret now as July comes and they're working on that F-1 registration statement. Still doesn't say anything. And then August, September, he keeps it hidden all the way through September. And then, he's not the person who tells Michael Hlavsa about the warrant agreement. No. Gary Hirst didn't call up Michael Hlavsa at any point in that chain.

The defense is having you believe, and we'll get to this in more specificity, but they are having you believe that that July 28th call was Gary Hirst realizing that, oh, no, the Shahini shares aren't in there, and that he then told Michael Hlavsa that at some point, and it gets corrected in the January, 2011 F-1 statement.

That explanation flies in the face of realty because Hlavsa did not know about that share issuance until September, 2010. So what happens? July, August, September. Gary Hirst doesn't bring this up at a board meeting, he didn't seek approval, he says nothing. He says nothing until Michael Hlavsa discovers it. Michael Hlavsa pulls the transaction report.

Now, you've seen a lot of documents from Continental during the course of this trial. And the defense is trying to suggest that those documents laid everything bare. You know the realty. They didn't, ladies and gentlemen. Michael Hlavsa didn't pull a transactional report until September because he was finalizing the equity section of the financials. He explained to you that there was a particular kind of report he pulled in September to do that, and that was the transactional report. That's when he sees that over 5 million shares had been issued that he didn't know about. Those other reports, those other reports the defense suggest should have made everything clear, you've seen those reports. Ymer Shahini's name isn't on those reports. The Ymer Shahini shares are buried in those reports in the CEDE number.

Even Mr. Mullings, who testified during this trial, explained to you, we don't even know who are the shareholders in that CEDE number. Even if we were asked for that information, we couldn't get that information. Even if Michael Hlavsa had said to us, who is that? And Michael Hlavsa explained to you, that CEDE number wasn't relevant to his job responsibilities. It wasn't one of numbers he focused on. You've heard from Mr. Hlavsa. You listened to him testify. He was a credible, truthful witness. A person who is doing his job. Who was awarded in his efforts to do that job by the defendant, Gary Hirst. And the defendant counted on that. He counted on the fact that that share issuance was going to remain hidden for some time. Now they're trying to blame Michael Hlavsa for that? Michael Hlavsa, who was the one who discovered it. He was the one who discovered it in September.

So he reaches out to Gary Hirst, and Gary Hirst sends him the warrant agreement and the calculation. And they also have a followup call. Think about those communications in the context of the defense argument. What would those communications have looked like if what the defense is trying to have you believe were true? You know what it would have looked like? It would have looked something like this:

Michael Hlavsa: "What is this? I don't know about this warrant calculation. I don't know about this warrant agreement. What's going on here?"

Gary Hirst. "What do you mean you don't know? I told you about this. Remember the conversations we had back in June? And what about Continental? Did you not get this information from Continental? Oh, my gosh."

That's not what those conversations were. Those are the conversations that would have been had if what the defense is peddling was true. That is not true.

What happens in September, 2010, when Michael Hlavsa gets that warrant agreement and the calculation, finally, after he discovered it, when he gets that from the defense? Well, the defendant does some things in those communications to further hide the scheme. Not to shed light on it, to further hide the scheme. There's two aspects of that communication that are lost.

One, the warrant agreement. The metadata in the warrant agreement was purposely backdated by Gary Hirst.

Now, I'm not going to spend time retreading why you know that warrant agreement didn't exist in March, 2009. But both the defense expert and the government expert agreed on this, the create dates on that document are worthless. They are easily manipulated. All you have to do is click on the date on your computer and change it. It takes a few seconds, ladies and gentlemen. You don't need to be a computer science major to know how to do that. But, in fact, Gary Hirst, you learned, was a computer science major.

But do you have any doubt in the context of this case with all of the backdating of documents that Gary Hirst would have taken that step to do that? You should have no doubt. Because both of the defense experts agreed, and they also -- the defendant's expert agreed that his opinion was limited because he didn't look at any computer. He didn't have a computer, he didn't have Gary Hirst's computer to look at to see was the date on this manipulated? No, he didn't have it. But you know it was manipulated because that agreement could not have occurred on March 29th before Ymer Shahini was even recruited to be part of this scheme.

And, you know, the defense had pointed to prior communications and prior relationship between Ymer Shahini and the Galanises. Ladies and gentlemen, they didn't pick Ymer

Shahini out of the blue. I don't think there was some past relationship there. But you've seen the emails. He wasn't recruited to be a part of this scheme until May. He wasn't told about this scheme until May. That warrant document wasn't done in March.

But there's something else about those Skype chats and about what Mr. Hirst said to Mr. Hlavsa during those chats that show you that he was calculating and lying to Mr. Hlavsa during those chats. You know what he said? He said, "Here's the warrant calculation. This was done by Shant Chalian."

(Continued on next page)

MS. HECTOR: You heard from Shant Chalian. He took the witness stand. He told you. I didn't do this. This is not my document. I didn't do this warrant calculation.

Why did Gary Hirst say that Shant Chalian had done the warrant calculation? Because he wanted to distance himself from him. Because he knew that calculation --

THE COURT: Ten minutes left.

MS. HECTOR: -- was manipulated. Manipulated to equal the same shares that Manley had.

Since I only have ten minutes, I am going to talk about the money, about the money that Gary Hirst got out of this scheme.

Now, everything about the defense argument on that money is an effort to put some distance between himself and that money. He points you to the fact that Galanis is the one that reached out to have Weston invest. But it was an investment in Gary Hirst's fund.

He says, Gary Hirst wasn't part of any communications about that. But you saw. Gary Hirst is the one who did the side letter with Mr. Hallac, the side letter that governed that investment, that ensured that Hallac would get his money back. And Gary Hirst is the one on the e-mails about the redemption in that money. That was Gary Hirst.

How about signatory. Mr. Blais went through, Gary Hirst is all over those accounts; he is all over those entities. And, ladies and gentlemen, just because he used the money to pay back an obligation doesn't mean it didn't benefit him. If you're a small business owner, if you own a hardware store, and you go rob a bank and use that money to pay one of your suppliers, does that mean that money didn't benefit you? Of course it did. That money benefited Gary Hirst.

And think about another thing with respect to that money. Think about the timing of that money, ladies and gentlemen. That money came on June 22. Do you remember what happened to the shares? They had just gone into the CK Cooper account. They had started getting the margin loan and June 22 is the first time they start to pull money out of this scheme, and who gets money on the first day that they start to pull money out of this scheme? Gary Hirst.

And the defense has tried to suggest that Gary Hirst had his shares of Gerova and lost money too. Those shares were restricted. That's misleading, ladies and gentlemen. Those shares were restricted.

Gary Hirst couldn't sell those shares. That was the whole point of the scheme, to get into their hands unrestricted shares.

Now, let me just talk a little bit more about that recording, because, ladies and gentlemen, you heard that recording. The defense is trying to suggest to you that Gary Hirst was surprised, concerned, wanted to now make sure that

that information gets out to the people who need to know.

Well, it's a good thing we have that recording. It's a good thing that you can listen to the tone in that recording. Because you heard the defendant's words. You heard. He is gleeful. He is gleeful.

And to suggest that Gary Hirst wasn't in on it. Do you really think that Jason Galanis would use someone like Gary Hirst, who needs to be at the center of this fraud, the person they need, the inside guy at Gerova who can cause the issuance of shares with the stroke of his pen, do you think Jason Galanis would rely on someone who wasn't involved, who didn't know, who wasn't going to demand payment at the end and did get payment at the end?

That's ridiculous. You heard that conversation. That is two co-conspirators patting themselves on the back, patting themselves on the back for getting away with it.

That is a conversation of someone who is trying to hide this. And, frankly, takes a lot of chutzpah to get up here and try to argue that that conversation is proof that Gary Hirst was trying to shine a light, was trying to put this information out there so it could be corrected? Absolutely not. Absolutely not, ladies and gentlemen.

It is an admission of guilt, an admission that he was very much involved in this scheme. A conversation with his partner in crime, Jason Galanis. A conversation just a few days after that $2.6 million came into his account.

Ladies and gentlemen, when you consider the evidence in this case, I want you to think back to that June time frame. I want you to think back to the conversations that you heard about Mr. Hirst and Mr. Hlavsa and his effort to do everything he could to hide the scheme and to start building in a cover story, a cover story that, ladies and gentlemen, he probably fully expected he would be telling you some day. Because that's what you have heard. The idea that this was a legitimate transaction flies in the face of those conversations he had with Mr. Hlavsa, when he didn't tell him any of the details that he is now trying to tell you.

Ladies and gentlemen, when you consider the evidence in this case, when you go back into that jury deliberation room, and you go back through what you have heard over the course of this past two weeks, I am confident that you will come to the only conclusion that is consistent with the evidence in this case, and that is that the defendant, Gary Hirst, is guilty of all four counts.

THE COURT: Thank you, Ms. Hector.

MR. TREMONTE: We have an objection that we would like to take up at the sidebar.

THE COURT: Very briefly.

(At the sidebar)

MR. TREMONTE: Your Honor, there is no good faith basis for Ms. Hector's argument to the jury that Mr. Hlavsa under any circumstances would have wanted to disclose the value of those shares at whatever it was, 72, 73 million dollars. There is no testimony to support it, there is no document in the evidence, and it is wrong. It's not the case, under any circumstances, that that number, the value of the shares, if they could be traded on the New York Stock Exchange, would ever be the subject of disclosure. It's misleading and we would request at a minimum a curative instruction.

MS. HECTOR: The point is, and there is ample testimony for this, that Mr. Hlavsa believed that 5.3 million shares, which is represented by the $72 million figure, was something he thought should have absolutely been disclosed to the public. He said that on multiple times during his testimony, and he said that it was absolutely material. It is also corroborated by the fact that the Stillwater individual, Jack Doueck, also testified that he believed, if he had any idea that 5.3 million shares had been issued to someone, that he also felt that that should be disclosed because it would have a diluted effect on all of the shares that his potential constituents had obtained.

MR. TREMONTE: I don't disagree for one minute that there was testimony in this case by witnesses who took the stand and said that they would wanted the number of shares to be specifically in the footnote disclosure in the 20-F.

However, there is no evidence in this case and it's not true that the number, the value attached to those shares would have been the subject of a disclosure, and that is misleading. It is prejudicial. It's not true.

MS. HECTOR: I think the value is shorthand for the amount of shares.

THE COURT: Thank you very much.

(Continued on next page)

(In open court)

THE COURT: Ladies and gentlemen, before I begin with my instructions, let me remind you that closing arguments of attorneys are not evidence. They are what they believe the evidence shows. If any attorney has stated a fact or belief that is not in accordance with your recollection of the evidence, it's your recollection of the evidence that controls, and you always have the ability to have any portion of the record read back.

Parties are able to argue that you should draw inferences from the evidence, and we will talk more about that. And at times parties may use shorthand language in the belief that you understand what they are referring to, but if you're not sure -- even if you are sure -- always remember closing arguments are not evidence.

So now let me begin with my final instructions to you.

Ladies and gentlemen, you have now heard all of the evidence in the case as well as the final arguments of the parties.

I will tell you I am going to give you a typed text of these instructions, but you should listen carefully.

We have reached the point where you are about to undertake your final duties as jurors. You have paid careful attention to the evidence, and I am confident that you will act together with fairness and impartiality to reach a just verdict in this case.

My duty is to instruct you as to the law, and it is your duty to accept these instructions of law and to apply them to the facts as you determine them.

On these legal matters, you must take the law as I give it to you. If any attorney has stated a legal principle different from any that I state in my instructions, it is my instructions you must follow. You must not substitute your own ideas of what the law is or ought to be.

You are not to infer from any of my questions or rulings or anything else I have said or done during the trial that I have any view as to the credibility of the witnesses or how you should decide the case.

As members of the jury, you are the sole and exclusive judges of the facts. You pass upon the evidence. You determine the credibility of the witnesses. You resolve such conflicts as there may be in the testimony. You draw whatever inferences you believe are reasonable to draw from the facts as you have determined them. You determine the weight of the evidence.

You have taken an oath as jurors and it is your sworn duty to determine the facts and to follow the law as I give it to you.

It is the duty of the attorneys to object when the other side offers testimony or other evidence that the attorney believes is not properly admissible. Therefore, you should draw no inference from the fact that any attorney objected to any evidence. Nor should you draw any inference from the fact that I sustained or overruled an objection.

From time to time, the lawyers and I had sidebar conferences and other conferences out of your hearing. These conferences involved procedural and other matters, and none of the events relating to the conferences should enter into your deliberations.

Your verdict must be based solely upon the evidence developed at trial or the lack of evidence. It would be improper for you to consider any personal feelings you may have about the defendant's race, religion, national origin, sex or age. The parties in this case are entitled to a trial free from prejudice and our judicial system cannot work unless you reach your verdict through a fair and impartial consideration of the evidence.

Similarly, under your oath, you are not to be swayed by sympathy. Once you let fear, prejudice, bias or sympathy interfere with your thinking, there is a risk that you will not arrive at a just result. Your verdict must be based exclusively upon the evidence or the lack of evidence in this case.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater and no lesser consideration than that accorded to any other party to a litigation. All parties, whether the government or an individual, stand as equals under the law.

The defendant in this case, Gary Hirst, has entered a plea of not guilty to the indictment. As I told you before, the law presumes a defendant to be innocent of all charges against him. I therefore instruct you that the defendant is to be presumed by you to be innocent throughout your deliberations until such time, if ever, that you, as a jury, are satisfied that the government has proven his guilt beyond a reasonable doubt.

The presumption of innocence alone is sufficient to require an acquittal of the defendant unless and until, after careful and impartial consideration of all the evidence, you, as jurors, are convinced unanimously of the defendant's guilt beyond a reasonable doubt.

The question that naturally comes up is: What is a reasonable doubt? The words almost define themselves. It is a doubt founded in reason and arising out of the evidence, or the lack of evidence, in the case. It is a doubt that a reasonable person has after carefully weighing all the evidence. Proof beyond a reasonable doubt must therefore be proof of such a convincing nature that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

Reasonable doubt is a doubt that appeals to your reason, your judgment, your experience, your common sense. It is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

The burden of proof here is upon the prosecution to prove guilt beyond a reasonable doubt. It must satisfy this burden as to each and every element of the crimes charged. This burden never shifts to the defendant. The law never imposes upon a defendant in a criminal case the burden of calling any witnesses or producing any evidence. The fact that one party called more witnesses and introduced more evidence does not mean that you should find in favor of that party.

If, after a fair, impartial and careful consideration of all the evidence, you can honestly say that you are not satisfied of the guilt of the defendant -- that is, if you have such a doubt as would cause you, as a prudent person, to hesitate before acting in matters of importance to yourself -- then you have a reasonable doubt. In that circumstance, it is your duty to acquit.

On the other hand, if after a fair, impartial and careful consideration of all the evidence, you can honestly say that you are satisfied of the guilt of the defendant and that you could not have a doubt that would prevent you from acting in important matters in the personal affairs of your own life, then you have no reasonable doubt. Under such circumstances, you should convict.

The evidence in this case is the sworn testimony of the witnesses, the exhibits received into evidence, and any stipulations made by the parties. By contrast, the questions of a lawyer are not evidence. It is the witnesses' answers that are evidence, not the questions standing alone.

Testimony that has been stricken or excluded by me is not evidence and may not be considered by you in rendering your verdict. If I instruct you that evidence is received for only a limited purpose, then it must only be considered for that limited purpose.

Arguments by lawyers are not evidence, because the lawyers are not witnesses. What the lawyers have said to you in their opening statements and in their summations is intended to help you understand the evidence. If, however, your recollection of the facts differs from the lawyers' statements, it is your recollection that controls. Any statements that I may have made during the trial are not evidence.

To constitute evidence, exhibits must first be admitted or received in evidence. Exhibits marked for identification but not admitted are not evidence, nor are materials brought forth only to refresh a witness's recollection.

It is for you alone to decide the weight, if any, to be given to the testimony you have heard and the exhibits you have seen.

Generally, there are two types of evidence that you may consider in reaching your verdict. One type is direct evidence. Direct evidence is when a witness testifies about something he or she knows by virtue of his or her own senses -- something he or she has seen, felt, touched, smelled or heard. The other type is circumstantial evidence, which is evidence from which you may infer the existence of certain facts. Let me give you an example to help you understand what is meant by circumstantial evidence.

Assume that when you came into the courthouse this morning the sun was shining and it was a nice day. Now I want you to assume that all the windows in this courtroom were covered and you couldn't see out. The curtains were so thick that you couldn't tell whether it was day or night. You have no idea what is going on outside. After a while the back doors of the courtroom opened and someone comes in with a raincoat on and the raincoat appears to be wet. And then a few minutes later somebody else comes in with an umbrella and the umbrella is dripping. Now, you cannot look outside the courtroom and you cannot see whether or not it is raining or had been raining. So you have no direct evidence of that fact. But, on the combination of facts that I have asked you to assume, it would be reasonable and logical for you to conclude that it had been raining.

That is all there is to circumstantial evidence. You infer, on the basis of reason and experience and common sense from one established fact, the existence or nonexistence of some other fact.

Circumstantial evidence is of no less value than direct evidence. As a general rule, the law makes no distinction between direct evidence and circumstantial evidence. It simply requires that your verdict must be based on all the evidence presented.

You have had the opportunity to observe all of the witnesses. It is now your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness and of the importance of his or her testimony.

You should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, the impression the witness made when testifying, and any other matter in evidence that may help you decide the truth and importance of each witness's testimony.

In other words, in assessing credibility, you may size up a witness in light of his or her demeanor, the explanations given and all of the other evidence in the case. In making your credibility determinations, use your common sense, your good judgment, and your everyday experiences in life.

If you believe that a witness knowingly testified falsely concerning any important matter, you may distrust the witness's testimony concerning other matters. You may reject all of the testimony or you may accept such parts of the testimony that you believe are true and give it such weight as you think it deserves.

In deciding whether to believe a witness, you may take into consideration any evidence of hostility or affection that the witnesses may have towards one of the parties. Likewise, you should consider evidence of any other interest or motive that the witness may have in cooperating with a particular party. You should also take into account any evidence that a witness or party may benefit in some way from the outcome of the case.

It is your duty to consider whether the witness has permitted any bias or interest to color his or her testimony. If you find that a witness is biased, you should view his or her testimony with caution, weigh it with care, and subject it to close and searching scrutiny.

Of course, the mere fact that a witness is interested in the outcome of the case does not mean that he or she has not told the truth. It is for you to decide from your observations and applying your common sense and experience and all the other considerations mentioned whether the possible interest of any witness or of any party has intentionally or otherwise colored or distorted his or her testimony. You are not required to disbelieve an interested witness. You may accept as much of his or her testimony as you deem reliable and reject as much as you deem unworthy of acceptance.

You have heard testimony from law enforcement officials. The fact that a witness may be employed by the federal, state or local government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness. At the same time, it is quite legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the ground that his or her testimony may be colored by a personal or professional interest in the outcome of the case. It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement witnesses and to give that testimony whatever weight, if any, you find it deserves.

You have heard testimony from government witnesses who pled guilty to charges either arising out of the same facts as this case, or to charges arising out of unrelated conduct, which I believe was the case with regard to Mr. Hallac. And you remember there was Mr. Hamels. You are instructed that you are to draw no conclusions or inferences of any kind about the guilt of the defendant on trial here from the fact that a prosecution witness pled guilty to similar charges or unrelated charges. The decision of each witness to plead guilty was a personal decision about his or her own guilt. It may not be used by you in any way as evidence against or unfavorable to the defendant on trial here.

Experience will tell you that the government frequently must rely on the testimony of witnesses who admit participating in various crimes. The law allows the use of accomplice testimony. The testimony of an accomplice may alone be enough to establish an element of a crime, if the jury believes that the testimony establishes that element beyond a reasonable doubt.

However, because of the possible interest an accomplice may have in testifying, an accomplice's testimony should be scrutinized with special care and caution. The fact that a witness is an accomplice may be considered by you as bearing upon his or her credibility. However, it does not follow that simply because a person has admitted participating in one more or crimes, he or she is incapable of telling the truth about what happened.

Like the testimony of any other witness, the testimony of an accomplice witness should be given such weight as it deserves, in light of the facts and circumstances before you, taking into account the witness's demeanor and candor, the strength and accuracy of his or her recollection, his or her background, and the extent to which his or her testimony is or is not corroborated by other evidence.

You may consider whether an accomplice witness -- like any other witness called in this case -- has an interest in the outcome of the case, and if so, whether it has affected his or her testimony.

In evaluating the testimony of accomplice witnesses, you should ask yourselves whether these accomplices would benefit more by lying or by telling the truth. Was their testimony made up in any way because they believed or hoped that they would somehow receive favorable treatment by testifying false? Or did they believe that their interests would be best served by testifying truthfully? If you believe that the witness was motivated by hopes of personal gain, was the motivation one that would cause him to lie, or was it one that would cause him to tell the truth? Did this motivation color his testimony?

If you find that the testimony was false, you should reject it. However, if, after a cautious and careful examination of an accomplice witness's testimony and demeanor on the witness stand, you are satisfied that the witness told the truth, you should accept it as credible and act upon it accordingly.

As with any witness, let me emphasize that the issue of credibility need not be decided in an all-or-nothing fashion. Even if you find that a witness testified falsely in one part, you still may accept his testimony in other parts, or you may disregard all of it. This is a determination entirely for you, the jury.

The testimony of a witness may be discredited by showing that the witness testified falsely concerning a material matter, or by evidence that at some other time the witness said or did something, or failed to say or do something, which is inconsistent with the testimony the witness gave at trial.

Here, you have heard evidence that witnesses made statements on earlier occasions that counsel argue are inconsistent with the witnesses' trial testimony. Evidence of a prior inconsistent statement is not to be considered by you as affirmative evidence bearing on the defendant's guilt. Evidence of the prior inconsistent statement was placed before you for the more limited purpose of helping you decide whether to believe the trial testimony of the witness who contradicted himself. If you find that the witness made an earlier statement that conflicts with his or her trial testimony, you may consider that fact in deciding how much of his or her trial testimony, if any, to believe. If you believe that a witness has been discredited in this manner, it is exclusively your right to give the testimony of that witness whatever weight you think it deserves.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact, or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency, and whether the explanation appealed to your common sense.

It is exclusively your duty, based upon all the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so, how much, if any, weight to be given to the inconsistent statement in determining whether to believe all or part of the testimony.

In this case, I have permitted certain witnesses to express their opinions about matters that are in issue. A witness may be permitted to testify to an opinion on those matters about which he or she has special knowledge, skill, experience and training. Such testimony is presented to you on the theory that someone who is experienced and knowledgeable in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing this opinion testimony, you may consider the witness's qualifications, his or her opinions, the reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness's testimony. You may give the opinion testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not, however, accept opinion testimony merely because I allowed the witness to testify concerning his or her opinion. Nor should you substitute it for your own reason, judgment and common sense. The determination of the facts in this case rests solely with you.

You have heard some evidence in this case that witnesses have discussed the facts of the case and their testimony with the lawyers before the witnesses appeared in court.

You may consider that fact when you are evaluating a witness's credibility. But I should tell you that there is nothing either unusual or improper about a witness meeting with lawyers before testifying so that the witness can be aware of the subjects he or she will be questioned about, focus on those subjects and have the opportunity to review relevant exhibits before being questioned about them. Such consultation helps conserve your time and the Court's time. In fact, it would be unusual for a lawyer to call a witness without such consultation.

You may not draw any inference, favorable or unfavorable, from the fact that any person in addition to the defendant is not on trial here. You also may not speculate as to the reasons why other persons are not on trial here. Nor may you consider the fact that the government has charged others who are not being tried here. Those matters are wholly outside your concern and have no bearing on your function as jurors.

There are persons whose names you have heard during the course of the trial but who did not appear here to testify. I instruct you that each party had an equal opportunity, or lack of opportunity, to call any of these witnesses. Therefore, you should draw no inference or reach any conclusion as to what they would have testified to had they been called. Their absence should not affect your judgment in any way.

You should remember, however, that the law does not impose on a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

The defendant did not testify in this case. Under our Constitution, a defendant has no obligation to testify or to present any evidence, because it is the government's burden to prove the defendant guilty beyond a reasonable doubt. That burden remains with the government throughout the entire trial and never shifts to the defendant. A defendant is never required to prove that he is innocent.

You may not attach any significance to the fact that the defendant did not testify. No adverse inference against him may be drawn by you because he did not take the witness stand. You may not consider this against the defendant in any way in your deliberations in the jury room.

There have been a number of summary charts and exhibits that were shown to you but not admitted into evidence. At the time they were shown to you, I have noted this fact to you. For these charts and exhibits that were not admitted, they serve merely as summaries and analyses of testimony and documents in the case and are here to act as visual aids to you. It is the underlying evidence and the weight which you attribute to it that gives value and significance to these charts. To the extent that the charts conform to what you determine the underlying facts to be, you should accept them. To the extent the charts differ from what you determine the underlying evidence to be, you may reject them.

Now, some of the exhibits that were admitted into evidence were in the form of charts and summaries. For these charts and summaries that were admitted into evidence, you should consider them as you would any other evidence.

A recording of a telephone conversation and e-mails have been admitted, or text messages have been admitted into evidence. I instruct you that this evidence was obtained in a lawful manner and that no one's rights were violated, and that the use of this evidence is entirely lawful.

Therefore, regardless of any personal opinions regarding the obtaining of such evidence, you must give this evidence full consideration along with any other evidence in this case in determining whether the government has proved the defendant's guilt beyond a reasonable doubt. What weight you give these materials, if any, is completely within your discretion.

Counsel, do I need to give the instruction on the bottom of page 18?

MS. HARRIS: Your Honor we don't have the written charge.

THE COURT: I'm sorry. That's my fault. I apologize.

Does the government have it?

MR. BLAIS: We do, and we do believe that instruction is appropriate.

THE COURT: You have answered my question.

MS. HARRIS: No objection, your Honor.

THE COURT: You have heard testimony about evidence seized in connection with certain searches conducted by law enforcement officers. Evidence obtained from these searches was properly admitted in this case, and may be properly considered by you. Such searches were entirely appropriate law enforcement actions. Whether you approve or disapprove of how the evidence was obtained should not enter into your deliberations, because I instruct you that the government's use of the evidence is entirely lawful.

You must, therefore, regardless of your personal opinions, give this evidence full consideration along with all the other evidence in this case in determining whether the government has proven the defendant's guilt beyond a reasonable doubt.

There is no legal requirement that the government prove its case through any particular means. While you are to carefully consider the law enforcement evidence introduced by the government, you are not to speculate as to why they used the techniques they did or why they did not use other techniques. Your concern is to determine whether, on the evidence or lack of evidence, the defendant's guilt has been proven beyond a reasonable doubt.

We have, among the exhibits received in evidence, some documents that are redacted. Redacted means that part of the document was taken out. You are to concern yourself only with the part of the item that has been admitted into evidence. You should not consider any possible reason why the other part of it has been deleted.

In this case you have heard evidence in the form of stipulations of testimony. A stipulation of testimony is an agreement between the parties that, if called as a witness, the person would have given certain testimony. You must accept as true the fact that the witness would have given that testimony. However, it is for you to determine the effect of that given testimony.

In this case, you have also heard evidence in the form of stipulations of fact. A stipulation of fact is an agreement between the parties that a certain fact is true. You must regard such agreed-upon facts as true.

The defendant in this matter, Gary Hirst, has been formally charged in what is called an indictment. An indictment is simply an accusation. It is no more than the means by which a criminal case is started. It is not evidence. It is not proof of the defendant's guilt. It creates no presumption, and it permits no inference that the defendant is guilty. You are to give no weight to the fact that an indictment has been returned against the defendant.

Before you begin your deliberations, you will be provided with a copy of the indictment. I will not read the indictment to you at this time. Rather, I will first summarize the offenses charged in the indictment and then explain in detail the elements of the charged offenses.

Ladies and gentlemen, you may stand up and stretch.

We are going to take a five-minute recess.

Ladies and gentlemen, do not discuss the case among yourselves or anyone. We will be back in five minutes.

(Jury exits courtroom)

(Recess)

THE COURT: I am going to have the verdict sheet marked as Court Exhibit 9.

Has defendant seen the verdict sheet?

MR. TREMONTE: Yes, your Honor.

THE COURT: Any objection?

MR. TREMONTE: No objection.

THE COURT: I will just tell the government for future reference, you do not have signature lines for each juror. You have the signature line for the foreperson. That's what is required. There are the additional signature lines on it.

MR. BLAIS: We can send someone down to change it.

THE COURT: If you would do that, that would be appreciated. We will keep that one marked and the next one will be a new exhibit.

Has the defense counsel seen the redacted indictment?

MR. TREMONTE: Yes, your Honor.

THE COURT: Leave the date line on that verdict sheet, please.

Any objection to the redacted indictment?

MR. TREMONTE: No objection.

THE COURT: That's going to be marked as Court Exhibit 10. And the final instructions to the jury, which have been handed out, are Court Exhibit 8.

MS. MERMELSTEIN: We have been following along in the most recent version of the charge until the final one which we had. I don't think we actually have a copy of the final one.

THE COURT: I am so sorry. You should have had that before I began so you can follow along. I apologize.

You can follow along on the marked Court version.

MR. BLAIS: Your clerk actually gave us one.

THE COURT: Bring our jury in, please.

(Jury present)

THE COURT: The indictment contains four counts or charges. Count One of the indictment charges that, from at least in or about 2009 through in or about 2011, defendant Gary Hirst conspired or agreed with others to commit securities fraud. As I will explain in more detail, a conspiracy, such as the one charged in Count One, is a criminal agreement to violate the law.

Count Two charges that, from at least in or about 2009 through in or about 2011, defendant committed the substantive offense of securities fraud. Later on, I will explain to you the differences between a conspiracy count and a substantive count. For now, just keep in mind that a conspiracy count is different from a substantive count. Count One charges defendant Gary Hirst with participating in a conspiracy to commit securities fraud. Count two charges defendant Gary Hirst with substantive securities fraud.

Count Three of the indictment charges that, from at least in or about 2009 through in or about 2011, defendant conspired or agreed with others to commit wire fraud.

Count Four of the indictment charges that, from at least in or about 2009 through in or about 2011, defendant Gary Hirst committed the substantive offense of wire fraud.

The indictment alleges that the securities fraud conspiracy charged in Count One, the substantive securities fraud offense charged in Count Two, the wire fraud conspiracy charged in Count Three and the substantive wire fraud offense charged in Count Four relate to an alleged scheme to defraud shareholders of Gerova Financial Group Ltd. -- to be referred to as "Gerova" -- and the investing public by effecting securities transactions in Gerova stock for the purpose of providing the defendant and others with undisclosed compensation, without adequate disclosure.

The defendant has pled guilty to all counts of the indictment.

MR. TREMONTE: Objection, your Honor.

You said Mr. Hirst pled guilty, which he didn't do.

THE COURT: I know he didn't. He pled not guilty. If I said that, I apologize. Defendant has pled not guilty, as you know, and is entitled to the presumption of innocence.

Thank you very much, Mr. Tremonte. I appreciate that.

Mr. Hirst's defense is that he held an honest belief that his actions were proper and not in furtherance of any illegal venture. If you believe that the government has not proven beyond a reasonable doubt that the defendant acted with criminal intent and had knowledge of the conspiracies and willfully participated in them, as I define those terms, then you must acquit.

You must remember that, by presenting a defense and pointing out evidence to you, the defendant has not assumed any burden of proof. The burden remains on the government to prove each and every element of each of the crimes charged beyond a reasonable doubt. In fact, the defendant did not have to present any defense. Because the defendant has presented a defense, you can consider that defense in deciding if the government has proved its case beyond a reasonable doubt.

You must consider each count separately, and you must return a separate verdict of guilty or not guilty for each count. Whether you find the defendant guilty or not guilty as to one count should not affect your verdict as to any other count.

Ladies and gentlemen, when you're in the jury room, you will have a two-page verdict form, which you will have in front of you and you will be able to look at. You will use it in returning your verdict and there will be simple questions for you to answer on that verdict sheet.

Now, let me begin with Count One.

Count One charges participation in a conspiracy to violate the federal statutes that make it unlawful to commit securities fraud. Specifically, it charges defendant that the defendant agreed to commit securities fraud in connection with the issuance of shares by Gerova and the disclosures, or lack of disclosure, to the investing public regarding Gerova.

The indictment lists the overt acts that are alleged to have been committed in furtherance of the conspiracy count.

I will come back to Count Three, the other conspiracy count, later on in my charge.

A conspiracy is a kind of criminal partnership -- an agreement of two or more people to join together to accomplish some unlawful purpose. The essence of the crime of conspiracy is an agreement or understanding to violate other law. If a conspiracy exists, even if it should fail in its purpose, it is still punishable as a crime.

The crime of conspiracy -- or agreement -- to violate the federal law, as charged in the indictment, is an independent offense. It is separate and distinct from the actual violation of any specific federal laws, such as that charged in Count Two, which the law refers to as substantive counts.

You may find a defendant guilty of the crime of conspiracy -- in other words, agreeing to commit securities fraud -- even if you find that the substantive crime which was the object of the conspiracy, the actual securities fraud, was never actually committed. Congress has deemed it appropriate to make conspiracy, standing alone, a separate crime, even if the conspiracy is not successful and no substantive crime is actually committed.

To prove defendant guilty of the conspiracy charged in Count One, the government must prove beyond a reasonable doubt each of the following three elements:

First, the existence of the conspiracy charged in Count One of the indictment; that is, the existence of an agreement or understanding to commit the unlawful object of the charged conspiracy, which in this case is securities fraud. The first element then is. Did the conspiracy alleged in the indictment exist? Was there such a conspiracy?;

Second, that the defendant willfully and knowingly became a member of the conspiracy, with intent to further its illegal purposes -- that is, with the intent to commit the object of the charged conspiracy; and

Third, that any of the conspirators -- not necessarily the defendant, but any one of the parties who is a member of the conspiracy -- knowingly committed at least one overt act in the Southern District of New York in furtherance of the conspiracy during the life of the conspiracy.

The Southern District of New York encompasses the following counties: New York County, which we all know as Manhattan, Bronx, Westchester, Rockland, Putnam, Dutchess, Orange and Sullivan Counties. Anything that occurs in any of those places occurs in the Southern District of New York.

Now, the first element, the existence of the conspiracy. What is a conspiracy? A conspiracy is an agreement or an understanding between two or more persons to accomplish by joint action a criminal or unlawful purpose.

To satisfy the first element of a conspiracy -- namely, to show that the conspiracy existed -- the government is not required to show that two or more people sat around a table and entered into a solemn pact, orally or in writing, stating that they had formed a conspiracy to violate the law and spelling out all of the details. Common sense tells you that when people, in fact, agree to enter into a criminal conspiracy, much is left to the unexpressed understanding. It is rare that a conspiracy can be proven by direct evidence of an explicit agreement.

In order to show that a conspiracy existed, the evidence must show that two or more people, in some way or manner, through any contrivance, explicitly or implicitly -- that is, spoken or unspoken -- came to a mutual understanding to violate the law and to accomplish an unlawful plan. If you find beyond a reasonable doubt that two or more persons came to an understanding, express or implied, to violate the law and to accomplish an unlawful plan, then the government will have sustained its burden of proof as to this element.

When people enter into a conspiracy to accomplish an unlawful end, they become agents and partners of one another in carrying out the conspiracy. In determining whether there has been an unlawful agreement as alleged, you may consider the acts and conduct of the alleged co-conspirators that were done to carry out the apparent criminal purpose. In addition, in determining whether such an agreement existed, you may consider direct as well as circumstantial evidence. The old adage, "Actions speak louder than words," applies here. Often, the only evidence that is available with respect to the existence of a conspiracy is that of disconnected acts and conduct on the part of the alleged individual co-conspirators. When taken all together and considered as a whole, however, these acts and conduct may warrant the inference that a conspiracy existed as conclusively as would direct proof, such as evidence of an express agreement. On this question, you should refer back to my earlier instructions on direct and circumstantial evidence and inferences.

(Continued on next page)

THE COURT: (Continued) Proof of several separate conspiracies is not proof of a single, overall conspiracy. You must determine whether the conspiracy charged in the indictment actually existed. If you find that the government has not proved beyond a reasonable doubt that the conspiracy charged in the indictment existed, you must acquit Mr. Hirst of that conspiracy.

You must first determine whether the evidence proves beyond a reasonable doubt the existence of the conspiracy charged in Count One of the indictment. It is sufficient to establish the existence of the conspiracy if you find beyond a reasonable doubt from proof of all the relevant facts and circumstances that the minds of at least two alleged coconspirators met to accomplish, by the means alleged, the object of the conspiracy.

The object of a conspiracy is the illegal goal the coconspirators agreed upon or hoped to achieve. The object of the conspiracy charged in Count One of the indictment is securities fraud. In order to prove the defendant is guilty of the conspiracy offense charged in Count One, the government must establish beyond a reasonable doubt that he agreed with others to commit securities fraud.

Because securities fraud is not only charged as an object of the conspiracy but as a separate substantive offense, I will be giving you further instructions about it later on.

It suffices to say that federal laws that are relevant here make it a crime in connection with the purchase or sale of securities to do any one of the following three things:

To employ a device, scheme, or artifice to defraud. So that's one of the three things as mentioned, and it has to be one of these three things. So that's one of them. And a device, scheme, or artifice to defraud is merely a plan for the accomplishment of any objective. Fraud is a general term which embraces all efforts and means that individuals devise to take advantage of others. A scheme to defraud is any plan, device or course of action, and may involve false or fraudulent pretenses, untrue statements of material fact, omission of material facts, representations, promises and patterns of conduct calculated to deceive.

The second thing made unlawful by the securities fraud statute is to make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

I have also used the word "material" in describing the nature of the false or misleading statements. The word "material" distinguishes between the kind of statements we care about and those that are of no real importance. Matters that are "material" may include fraudulent half-truths or omissions of material fact. A material fact is one that a reasonable person might have considered important in making his or her investment decision. That means if you find a particular statement of fact or omission to have been untruthful or misleading, before you can find the statement or omission to be material, you must also find that the statement or omission was one that would have mattered to a reasonable person in making such an investment decision.

The third thing made unlawful is to engage in an act, practice, or course of business that operated, or would operate, as a fraud or deceit upon a purchaser or seller.

If you find beyond a reasonable doubt that the defendant agreed with at least one other person that any one of these three things be done, then the securities fraud objective would be proved.

If you find that the government has proved beyond a reasonable doubt that the conspiracy existed and that the conspiracy had securities fraud as its object, then you must next consider the second element; namely, whether the defendant participated in the conspiracy with knowledge of its unlawful purpose and in furtherance of its unlawful objective.

In order to satisfy the second element of Count One, the government must prove beyond a reasonable doubt that the defendant knowingly and willfully entered into the conspiracy with a criminal intent -- that is, with a purpose to violate the law -- and that he agreed to take part in the conspiracy to further promote and cooperate in its unlawful objective.

An act is done knowingly and willfully if it is done deliberately and purposely; that is, the defendant's actions must have been his conscious objective rather than the product of a mistake or accident or mere negligence or some other innocent reason.

To satisfy its burden of proof that the defendant willfully and knowingly became a member of the conspiracy to accomplish an unlawful purpose, the government must prove beyond a reasonable doubt that the defendant knew he was a member of an operation or conspiracy to accomplish that unlawful purpose, and that his action of joining such an operation or conspiracy was not due to carelessness, negligence, or mistake.

knowledge, of course, is a matter of inference from the proven facts. Science has not yet devised a manner of looking into anyone's mind and knowing what he's thinking. However, you do have before you evidence of acts alleged to have taken place by or with the defendant or in his presence. A defendant's knowledge is a matter of inference from the facts proven. In that connection, I instruct you that, to become a member of the conspiracy, the defendant need not have known the identities of each and every other member of the conspiracy, nor need he have been apprised of all of their activities. Moreover, the defendant need not have been fully informed as to all details or the scope of the conspiracy in order to justify an inference of knowledge on his part.

The duration and extent of the defendant's participation in the conspiracy charged in Count One has no bearing on the issue of his guilt. He need not have joined the conspiracy at the outset. He may have joined it at any time in its progress, and the defendant will still be held responsible for all that was done before he joined and all that was done during the conspiracy's existence while the defendant was still a member. Indeed, each member of a conspiracy may perform separate and distinct acts and may perform them at different times. Some conspiracy play major roles, while others play minor parts in the scheme. An equal role is not what the law requires. In fact, even a single act may be sufficient to draw the defendant within the ambit of the conspiracy.

I want to caution you that a person's mere association with a member of a conspiracy does not make that person a member of the conspiracy, even when that association is coupled with knowledge that a conspiracy is taking place. Mere presence at the scene of a crime, even coupled with knowledge that a crime is taking place, is not sufficient to support a conviction. Similarly, a person may know, assemble with, be friendly with, or do business with one or more members of a conspiracy without being a conspirator himself. In other words, knowledge without agreement and participation is not sufficient. What is necessary is that the defendant participated in the conspiracy with knowledge of at least some of the purposes or objects of the conspiracy, and with an intent to aid in the accomplishment of its unlawful objective.

Once a conspiracy is formed, it is presumed to continue until either its objective is accomplished or there is some affirmative act of termination by the members. So, too, once a person is found to be a member of a conspiracy, he is presumed to continue as a member in the conspiracy until the conspiracy is terminated, unless it is shown by some affirmative proof that the person withdrew and disassociated himself from it.

In sum, the defendant, with an understanding of the unlawful character of the conspiracy, must have intentionally engaged, advised, or assisted in it for the purpose of furthering the illegal undertaking. He thereby becomes a knowing and willing participant in the unlawful agreement -- that is to say, a conspirator.

The third element of the conspiracy to commit securities fraud charged in Count One is the requirement of an overt act in furtherance of the conspiracy. To sustain its burden of proof with respect to the conspiracy charged, the government must show beyond a reasonable doubt that at least one overt act was committed in furtherance of the conspiracy by at least one of the coconspirators, not necessarily the defendant.

The purpose of the overt act requirement is clear. There must have been something more than mere agreement, some overtime step or action must have been taken by at least one of the conspirators in furtherance of that conspiracy.

The overt acts are set forth in the indictment. As I mentioned, you will be provided with a copy of the indictment.

You may find that overt act were committed which were not alleged in the indictment. The only requirement is that one of the members of the conspiracy, not necessarily the defendant, has taken some step or action in furtherance of the conspiracy during the life of that conspiracy. For the government to satisfy the overt act requirement, it is not necessary for the government to prove all of the overt acts alleged in the indictment.

The overt act element is a requirement that the agreement went beyond the mere talking stage, the mere agreement stage. The requirement of an overt act is the requirement that some action be taken during the life of the conspiracy by one of the coconspirators to further that conspiracy.

You are instructed that the overt act need not have been committed at precisely the time alleged in the indictment. It is sufficient if you are convinced beyond a reasonable doubt that it occurred at or about the time and place stated, as long as it occurred while the conspiracy was in existence.

You should bear in mind that the overt act standing alone may be an innocent, lawful act. Frequently, however, an apparently innocent act sheds its harmless character if it is a step in carrying out, promoting, aiding, or assisting the conspiratorial scheme. You are therefore instructed that the overt act does not have to be an act which, in and of itself, is criminal or constitutes an object of the conspiracy.

You will recall that I have allowed into evidence the acts and statements of others because these acts and statements were committed or made by persons who the government charges were also confederates or coconspirators of the defendant.

The reason for allowing the evidence to be received against the defendant has to do in part with the nature of the crime of conspiracy. A conspiracy is often referred to as a partnership in crime: As in other types of partnerships, when people enter into a conspiracy to accomplish an unlawful end, each and every member becomes an agent for the other conspirators in carrying out the conspiracy.

Therefore, the reasonably foreseeable act or statements of any member of the conspiracy, committed in furtherance of the common purpose of the conspiracy, are deemed, under the law, to be the acts or statements of all of the members, and all of the members are responsible for such acts or statements.

If you find, beyond a reasonable doubt, that the defendant was a member of the conspiracy charged, then any acts done or statements made in furtherance of the conspiracy by a person also found by you to have been a member of the same conspiracy may be considered against the defendant so long as those acts or statements were reasonably foreseeable to the defendant. This is so even if such acts were committed or such statements were made in the defendant's absence and without his knowledge.

However, before you may consider the acts or statements of a coconspirator in deciding the guilt of the defendant, you must first determine that the acts were committed or statements were made during the existence and in furtherance of the unlawful scheme. If the acts were done or the statements were made by someone whom you do not find to have been a member of the conspiracy, or if they were not in furtherance of the conspiracy, they may not be considered by you in deciding whether a defendant is guilty or not.

Ladies and gentlemen, please stand up and stretch.

(Pause)

THE COURT: Please be seated.

Count Two of the indictment charges the defendant with committing the crime of securities fraud from at least in or about 2009 through in or about 2011, in connection with the issuance of shares by Gerova and the disclosures, or lack of disclosures, to the investing public regarding Gerova.

To prove a defendant guilty of securities fraud charged in Count Two, the government must prove beyond a reasonable doubt each of the following three elements:

first, that in connection with the purchase or sale of stock or shares in a company, the defendant did any one or more of the following:

One, employed a device, scheme or artifice to defraud.

Two, made a untrue statement of material fact or omitted to state a material fact which made what was said under the circumstances misleading.

Three, engaged in an act, practice, or course of business that operated or would operate as a fraud or deceit upon a purchaser or seller.

So that's the first element.

Second element, that the defendant acted knowingly, willfully and with the intent to defraud,

Third, that the defendant used or caused to be used any means or instruments of transportation or communication in interstate commerce or the use of the mails in further of the fraudulent conduct.

I've told you what the first element is. To prove this element, it is not necessary for the government to prove all three types of unlawful conduct in connection with the purchase or sale of securities. Any one will suffice. You must, however, be unanimous as to which type of unlawful conduct, if any, the defendant committed.

Remember that's employed a device, scheme, or artifice to defraud, or second, made an untrue statement of material fact, or omitted to state a material fact which made what was said under the circumstances misleading, or number three, engaged in an act, practice, or course of business that operated, or would operate, as a fraud or deceit upon a purchaser or seller.

A device, scheme or artifice is merely a plan for the accomplishment of any objective. I've already told you this before, but I'll say it again. Fraud is a general term that embraces all ingenious efforts and means that individuals devise to take advantage of others. It includes all kinds of manipulative and deceptive acts. The fraud or deceit need not relate to the investment value of the securities involved in the case. Also, it is not necessary that the defendant made a profit or that anyone actually suffered a loss for you to find that the government has proven this element beyond a reasonable doubt.

A statement, representation, claim, or document is false if it is untrue when made and was then known to be untrue by the person making it or causing it to be made. A representation or statement is fraudulent if it is made with the intent to deceive. The concealment of material facts in a manner that makes what is said or represented deliberately misleading may also constitute false or fraudulent statements under the statute. The failure to disclose information may constitute a fraudulent representation if the defendant was under a legal, professional or contractual duty to make such a disclosure, the defendant actually knew such a disclosure was required to be made, and the defendant failed to make such disclosure with the intent to defraud.

The deception need not be based upon spoken or written words alone. The arrangement of the words, or the circumstances in which they are used, may convey the false or deceptive appearance. If there is deception, the manner in which it is accomplished does not matter.

You cannot find that the government has proven the first element unless you find that the defendant participated or agreed to participate in fraudulent conduct that was "in connection with" a purchase or sale of securities. The requirement that the fraudulent conduct be "in connection with" a purchase or sale of securities is satisfied so long as there is some nexus, connection, or relation between the allegedly fraudulent conduct and the sale or purchase of securities. Fraudulent conduct may be "in connection with" the purchase or sale of securities if you find that the alleged fraudulent conduct "touched upon" a securities transaction. You need not find that the defendant actually participated in any specific purchase or sale of a security if you find that the defendant participated, or agreed to participate, in fraudulent conduct that was "in connection with" a "purchase or sale" of securities.

It is not necessary for you to find that the defendant was or would be the actual seller of the securities. It is sufficient if the misrepresentation or omission of material fact involved the purchase or sale of securities. The government need not prove that the defendant personally made the misrepresentation or that he omitted the material fact. It is sufficient that the government establishes that the defendant caused the statement to be made or the fact to be omitted. With regard to the alleged misrepresentations and omissions, you must determine whether the statements were true or false when made, and in the case of alleged omissions, whether the omissions were misleading.

If you find that the government has established beyond a reasonable doubt that a statement was false or an omission in the statement made it misleading, you must next determine whether the statement or omission was material under the circumstances. The word "material" refers to the nature of the false or misleading statements. As I told you before, the word "material" distinguishes between the kinds of statements we care about and those that are of no real importance. Matters that are material may also include fraudulent half-truths or omissions of material fact. A material fact is one that a reasonable person would have considered important in making his or her investment decision. That means, if you find a particular statement or a fact or omission to have been untruthful or misleading, before you can find the statement or omission to be material, you must also find that it was one that would have mattered to a reasonable person in making such an investment decision.

In considering whether a statement or omission was material, let me caution you that it is not a defense that a material misrepresentation or omission would not have deceived a person of ordinary intelligence. Once you find that the offense involved the making of material misrepresentations or omissions of material fact, it does not matter whether the intended victims were gullible buyers or sophisticated investors, because the securities law protects the gullible and the unsophisticated, as well as the experienced investor.

Nor does it matter whether the alleged conduct was or would have been successful, or whether the defendant profited or would have profited as a result of the alleged scheme. Success is not an element of the crime. If you find that the defendant expected to or did profit from the alleged scheme, you may consider that in relation to the element of intent, which I will discuss in a moment.

The second element of Count Two is that the defendant acted knowingly, willfully, and with intent to defraud. As with all elements, they have to be proven by the government by proof beyond a reasonable doubt.

An act is done knowingly and willfully if it is done deliberately and purposely; that is, the defendant's actions must have been his conscious objective rather than the product of a mistake or accident or mere negligence or some other reason.

Intent to defraud in the context of the securities laws means to act unknowingly and with an intent to deceive.

The question of whether a person acted knowingly, willfully, and with an intend to defraud is a question of fact for you to determine, like any other fact question. The question involves one's state of mind.

Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case where it could be shown that a person wrote or stated that as of a given time, in the past, he committed an act with fraudulent intent. Such direct proof is not required. The ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence based upon a person's outward manifestations, his words, his conduct, his acts, and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn therefrom.

What is referred to as drawing inferences from circumstantial evidence is no different from what people normally mean when they say, "use your common sense." Using your common sense means that, when you come to decide whether a person possessed or lacked an intent to defraud, you do not limit yourself to what the defendant said, but you also look at what he did and what others did in relation to the defendant, and in general, everything that occurred.

Circumstantial evidence, if believed, I've already told you this, is of no less value that direct evidence. In either case, the essential elements of the crime must be established beyond a reasonable doubt.

The government need only prove that the defendant acted with an intent to deceive, manipulate or defraud. The government need not show that the defendant acted with an intent to cause harm.

Let me advise you that since an essential element of the crimed charged is an intent to defraud, it follows that good faith, as I will define the term on the part of a defendant, is a complete defense to a charge of securities fraud. A defendant has no burden to establish a defense of good faith, the burden is on the government to prove fraudulent intent and consequent lack of good faith beyond a reasonable doubt. Under the antifraud statutes, even false representations or statements or omissions of material fact do not amount to a fraud unless done with fraudulent intent. An honest belief in the truth of the representations made by a defendant is a complete defense, however inaccurate the statements turn out to be.

In considering whether or not a defendant acted in good faith, you are instructed that a belief by a defendant, if such belief existed, that ultimately everything would work out so that no investors would lose any money, or that particular investments would ultimately be financially advantageous for clients, does not necessarily constitute good faith. No amount of honest belief on the part of a defendant that the scheme will ultimately make a profit for the investors will excuse fraudulent actions or false representations by him.

To prove the charge against the defendant, the government must establish beyond a reasonable doubt that the defendant knew that his conduct was calculated to deceive and that he nevertheless associated himself with the alleged fraudulent scheme.

The government may prove that the defendant acted knowingly and willfully in either of two ways. Further, it is sufficient, of course, if the evidence satisfies you beyond a reasonable doubt that the defendant was actually aware he was making or causing a false statement to be made, or omitting or causing to be omitted a material fact. Second, a defendant's knowledge may be established by proof that the defendant was aware of a high probability that the statement was false, or that a material fact was omitted, unless, dispute the high probability, the facts show that the defendant actually believed the statement to be true or that the material fact was not omitted. This concept is known as conscious avoidance, and I'll explain it a little later in these instructions.

The third and final element of the count is that the government prove beyond a reasonable doubt that the defendant knowingly used or caused to be used the mails or the instrumentalities of interstate commerce in furtherance of the scheme to defraud.

Let me first note that it is unnecessary for the government to prove the mails and an instrumentality of interstate commerce were used in furtherance of the fraudulent scheme. Only one of those -- either the mails or an instrumentality -- is enough. But you must be unanimous as to at least one.

In considering this element, it's not necessary for you to find that the defendant was or would have been directly or personally involved in any mailing or the use of an instrumentality of interstate commerce if the conduct alleged would naturally or probably result in the use of the mails or an instrumentality of interstate commerce. That would be enough to satisfy the element.

Nor is it necessary that the items sent through the mails or communicated through an instrumentality of interstate commerce did or would contain the fraudulent material or anything criminal or objectionable. The matter mailed or communicated may be entirely innocent so long as it is in furtherance of the scheme to defraud or fraudulent conduct.

The use of the mails or an instrumentality of interstate commerce need not be central to the execution of the scheme or even be incidental to it. All that is required is the use of the mails or an instrumentality of interstate commerce that bears some relation to the object of the scheme or fraudulent conduct.

In fact, the actual purchase or sale of the security need not be accompanied by the use of the mails or an instrumentality of interstate commerce so long as the mails or instrumentality of interstate commerce are used in furtherance of the scheme and the defendant was still engaged in actions that are part of a fraudulent scheme when the mails or the instrumentality of interstate commerce were used.

The use of the term "mails" is self-explanatory. It includes the United States mail and Federal Express and other commercial mail couriers. The term "instrumentality of interstate commerce" includes any communication network that involves more than one state. Interstate telephone calls -- i.e., telephone calls made by a caller in one state to a person in another state, or in the United States to another country, or vice versa, would be an example of using an instrumentality of interstate commerce. Other examples would be an email or a facsimile that was sent from one state to another state or from the United States to another country or vice versa.

Let's stand up and stretch, ladies and gentlemen.

(Pause)

THE COURT: The defendant, Gary Hirst, is charged in Count Three with participating in a conspiracy from at least in or about 2009 through in or about 2011, to violate the federal statute that makes it unlawful to commit wire fraud.

Specifically, Count Three charges that the defendant, Gary Hirst, agreed with at least one other person to commit wire fraud in connection with the issuance of shares by Gerova and the disclosures, or lack of disclosures, to the investing public regarding Gerova.

To prove the defendant guilty of the conspiracy charged in Count Three, the government must prove beyond a reasonable doubt each of the following two elements:

First, the existence of the conspiracy charged in Count Three; that is, the existence of an agreement or understanding to commit the unlawful object of the charged conspiracy, which in this case is wire fraud.

Second, that the defendant willfully and knowingly became a member of the conspiracy with the intent to further its illegal purposes; that is, with the intent to commit the object of the charged conspiracy.

The first and second elements of the conspiracy charged in Count Three are the same as the first two elements the government is required to prove with regard to the conspiracy alleged in Count One; namely, the existence of the agreement to violate the law and a defendant's knowing and willful entry into that agreement.

The instructions I provided earlier about what it means to have an unlawful agreement and what it means to knowingly enter into that agreement similarly apply to Count Three.

Keep in mind that you may find the defendant guilty of the crime of conspiracy to commit wire fraud even if the substantive crime of wire fraud was not actually committed. Conspiracy is a crime, even if the conspiracy is not successful or if the defendant himself did not commit the substantive crime.

I will now explain the requirements of the conspiracy alleged in Count Three that differ from the conspiracy alleged in Count One -- the lack of an overt act requirement and the object of the conspiracy.

Unlike the conspiracy charged in Count One, Count Three does not have an overt act requirement. It is not necessary for the government to prove that an overt act in furtherance of the conspiracy charged in Count Three took place. The government need only prove the existence of the conspiracy charged in the indictment and that the defendant knowingly and intentionally became a member of the conspiracy.

The object of the conspiracy charged in Count Three is wire fraud. In order to prove the defendant is guilty of the conspiracy charged in Count Three, the government must establish beyond a reasonable doubt that the defendant agreed with others to commit wire fraud.

Wire fraud is not only charged as an object of the conspiracy charged in Count Three, but also as a separate substantive offense in Count Four.

Count Four of the indictment charges Gary Hirst with committing the substantive offense of wire fraud from at least in or about 2009 through in or about 2011. Wire fraud is also the object of the conspiracy charged in Count Three.

Count Four charges Defendant Hirst committed wire fraud in connection with the issuance of shares by Gerova and the disclosures, or lack of disclosures, to the investing public regarding Gerova.

In order to prove the defendant guilty of wire fraud, the government must separately establish beyond a reasonable doubt the following three elements:

First, that in or about the times alleged there was a scheme or artifice to defraud others of money or property by false or fraudulent pretenses, representations, or promises.

Second, that the defendant knowingly and willfully devised or participated in the scheme or artifice to defraud with knowledge of its fraudulent nature and with the specific intent to defraud,

Third, that in the execution of the scheme, the defendant used or caused the use by others of interstate or foreign wires.

The first element is the existence of a scheme or artifice to defraud others of money or property by means of false or fraudulent pretenses, representations, or promises. A scheme or artifice is simply a plan for the accomplishment of an object.

Fraud is as I have defined it previously in these instructions.

Thus, a scheme to defraud is any plan, device, or course of action to deprive another of money or property by means of false or fraudulent pretenses, representations, or promises. It is a plan to deprive another of money or property by trick, deceit, deception, or swindle.

In order to establish a scheme to defraud, the government need not show that the defendant made a misrepresentation. A scheme to defraud can exist even if the scheme did not progress to the point where misrepresentations would be made. Even if you find that the statements the government contends were made or contemplated by the defendant in furtherance of the scheme were literally true, you can still find that the first element of the wire fraud statute has been satisfied if the statements and/or conduct of the defendant were deceptive. You may also find the existence of such a scheme if you find the defendant conducted himself in a manner that departed from traditional notions of fundamental honesty and fair play in the general business life of society.

A scheme to defraud need not be shown by direct evidence, but may be established by all the circumstances and facts in the case.

A pretense, representation, or statement is fraudulent if it was made falsely and with intent to deceive. A statement may also be fraudulent if it contains half-truths or if it conceals materials facts in a manner that makes what is said or represented deliberately misleading or deceptive.

The failure to disclose information may also constitute a fraudulent representation if the defendant was under a legal, professional, or contractual duty to make such a disclosure, the defendant actually knew such disclosure was required, and the defendant failed to make such disclosure with the intent to defraud.

The false or fraudulent representation or concealment must relate to a material fact or matter. I have previously explained what "material" means under the circumstances, and that applies here.

In order to satisfy the first element, the government must also prove that the alleged scheme contemplated depriving another of money or property. It is not necessary for the government to establish that the defendant actually realized any gain from the scheme or that any particular person actually suffered any loss as a consequence of the fraudulent scheme. You must concentrate on whether there was a scheme, not on the consequences of the scheme.

In this regard, a person is not deprived of money or property only when someone directly takes his money or property from him; rather, a person is also deprived of money or property when important information is withheld from that person or when that person is provided false or fraudulent information that, if believed, would prevent him from being able to make informed economic decisions about what to do with his money or property. In other words, a person is deprived of money or property when he is deprived of the right to control the money or property. And he is deprived of the right to control that money or property when important information is withheld from him or where he receives false or fraudulent statements that affect his ability to make discretionary economic decisions about what to do with that money and property. Again, the government need not show that any victim investor lost money or property as a result of the scheme. Such a loss must, however, have been contemplated by the defendant. Put another way, it's not necessary that the defendant have intended his misrepresentations or omissions would cause an actual loss; it is sufficient that the defendant intended the misrepresentation or omission would induce the victim to enter into the transaction without the relevant facts necessary to make an informed economic decision. If you find that the government has sustained its burden of proof that a scheme to defraud did exist, you should next consider the second element.

The second element is that the defendant devised or participated in the fraudulent scheme knowingly, willfully and with the specific intent to defraud. The words "devised" and "participated" are words that you are familiar with and, therefore, I need not spend much time defining them.

To devise a scheme to defraud is to concoct or plan it. To participate in a scheme to defraud means to associate oneself with it with a view and intent towards making it succeed. While a mere on-looker is not a participant in a scheme to defraud, it is not necessary that a participant be someone who personally and visibly executes the scheme to defraud.

In order to satisfy this element, it is not necessary for the government to establish that the defendant originated the scheme to defraud. It is sufficient if you find that a scheme to defraud existed even if originated by another, and that the defendant, while aware of the scheme's existence, knowingly participated in it.

It is also not required that defendant participated in or have knowledge of all of the operations of the scheme. The guilt of the defendant is not governed by the extent of his participation.

It is also not necessary that the defendant participated in the alleged scheme from the beginning. A person who comes in at a later point with knowledge of the scheme's general operation, although not necessarily all of its details, and intentionally acts in a way to further the unlawful goals, becomes a member of the scheme and is legally responsible for all that may have been done in the past in furtherance of the criminal objective and all that is done thereafter.

Even if the defendant participated in the scheme to a lesser degree than others, he is nevertheless equally guilt, so long as he became a member of the scheme to defraud with knowledge of its general scope and purpose. Before the defendant may be convicted of the fraud charged here, the wire fraud charged here, he must also be shown to have acted knowingly and willfully and with a specific intent to defraud. I have previously defined the terms "knowingly" and "willfully" and you are to follow those instructions here.

A defendant acts with specific intent to defraud if he engaged or participated in the fraudulent scheme with some realization of its fraudulent or deceptive character and with an intent to be involved in the scheme to defraud and to help it succeed with a purpose of causing harm to the victim.

The government need not prove that the intended victims were actually harmed, only that such harm was contemplated. Actors are presumed to intend the natural and probable consequences of their actions, so when the necessary result of the actor's scheme is to injury others, fraudulent intent may be inferred from the scheme itself.

The question of whether a person acted knowingly, willfully and with the specific intent to defraud is a question of fact for you to determine, like any other fact question. The question involves one's state of mind. As I explained before, direct proof of knowledge, willfulness and fraudulent intent is almost never available.

I've told you these concepts before.

The ultimately impacts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence, and I've told you what circumstantial evidence is, and I need not repeat that.

I instructed you before as to Count Two on the concept of good faith. And then I told you that it was a complete defense to that charge, and it's a complete defense to a charge of wire fraud, as well.

And everything I said with regard to good faith applies equally as to Count Four.

Now, the third and final element that the government must establish beyond a reasonable doubt as to each wire fraud count is that interstate or foreign wire facilities were used in furtherance of the scheme to defraud. Interstate or foreign requirement means that the require communication must pass between two or more states as, for example, a transmission of computer signals between New York and another state, such as New Jersey, California, or a territory, such as the U.S. Virginia Islands, or between the United States and another country.

It's not necessary for the defendant to be directly or personally involved in any wire communication, as long as the communication is reasonably foreseeable in the execution of the alleged scheme to defraud in which the defendant is accused of participating. In this regard, it would be sufficient to establish this element of the crime if the evidence justifies a finding that the defendant caused the wires to be used by others, and this does not mean that the defendant himself must have specifically authorized others to execute a wire communication. When one doesn't act with knowledge that the use of the wires will follow in the ordinary course of business, or where such use of the wires can reasonably be foreseen, even though not actually intended, then he causes the wires to be used.

Incidentally, this wire communication requirement is satisfied even if the wire communication was done by a person with no knowledge of the fraudulent scheme, including a victim of the alleged fraud.

The use of a wire need not itself be fraudulent. Stated another way, the wire communication need not contain any fraudulent misrepresentation or even any request for money, it's sufficient if the wires were used to further or assist in carrying out the scheme to defraud.

Let me add the following. Only the wire communication must be reasonably foreseeable, not its interstate or foreign component. Thus, if you find that the wire communication was reasonably foreseeable and the interstate or foreign wire communication actually took place, then this element is satisfied even if it was not foreseeable that the wire communication would cross state or national lines.

Now, each of the substantive counts charged in the indictment -- the securities fraud charge in Count Two and the wire fraud charged in Count Four -- also charges the defendant with aiding and abetting; that is, the defendant is charged not only as a principal who committed the crime, but also as an aider and abettor and with willfully having caused the crime.

So the government may prove that the defendant willfully caused the crime, but the government may also endeavor to prove aiding and abetting. Aiding and abetting means to counsel, command, or induce, or procure the commission of the crime.

Under the aiding and abetting statute, it's not necessary for the government to show that the defendant himself physically committed the crime with which he is charged in order to find him guilty. Thus, even if you do not find beyond a reasonable doubt that the defendant himself committed the crime, you may, under certain circumstances, still find him guilty of that crime as an aider and abettor. A person who aids or abets another to commit an offense is just as guilty as if he committed it himself. Accordingly, you may find the defendant guilty of the substantive crime if you find beyond a reasonable doubt that the defendant has proved that another actually committed the crime and that defendant aided and abetted that person in the commission of the offense.

The first requirement is that another person has committed the crime charged. Obviously, no one can be convicted of aiding and abetting the criminal acts of another if no crime is committed by another person in the first place. But if you do find that a crime is committed, then you must consider whether the defendant aided or abetted the commission of the crime. You may only find that the defendant aided or abetted another to commit a crime if the government proves beyond a reasonable doubt that the defendant willfully and knowingly associated himself in some way with the crime, and that he willfully and knowingly sought by some act to help make the crime succeed.

Participation in a crime is willful if the action is taken voluntarily and intentionally, or in the case of a failure to act with a specific intent to fail to do something the law requires to be done; that is, with a bad purpose either to disobey or disregard the law.

As I said before, mere presence of the defendant while a crime is being committed, even coupled with knowledge by him that the crime is being committed, or mere acquiescence by the defendant in the criminal conduct of others, even with guilty knowledge, is not sufficient to establish aiding and abetting. The aider and abettor must have some interest in the criminal venture.

Ask yourselves these questions. Did the individual participate in the crime charged as something he wished to bring about? Did he associate himself with the criminal venture knowingly and willfully? Did he seek by his actions to make the criminal venture succeed?

If the government proves beyond a reasonable doubt that he did, then the defendant is an aider and abettor and guilty of the offense. If the government does not, then the defendant is not an aider and abettor and is not guilty as an aider and abettor.

Now, I think I've told you quite a bit about willfully, but I'll tell you this much, that the government can prove the defendant's guilt on the substantive counts by finding that the defendant willfully caused a crime.

A person willfully causes an act to be done if it's directly performed by him or another as an offense against the United States.

What does "willfully caused" mean? It means that the defendant himself need not have physically committed the crime or supervised or participated in the actual criminal conduct charged in the indictment. The meaning of "willfully caused" can be found in the answers to the following questions:

Did the defendant take some action without which the crime would not have occurred? Did the defendant intend that the crime would be actually committed by others?

If you are persuaded beyond a reasonable doubt that the answer to both of these questions is "yes", with respect to the count you are considering, then the defendant is guilty of the crime charged, just as if the defendant himself had committed it. If your answer to either one of these questions is "no", if it's "no", then the defendant is not guilty of willfully causing the offense.

I've told you that the defendant, in various respects, previously described, must have acted knowingly in order to be convicted. This is true with respect to all four counts of the indictment.

In determining whether the defendant acted knowingly with respect to the substantive crimes or the objects of the conspiracy, you may consider whether the defendant deliberately closed his eyes to what otherwise would have been obvious to him. That is what the phrase "conscious avoidance" refers to.

An act can be done knowingly if it's a product of a person's conscious intent. It cannot be the result of carelessness, negligence, or foolishness. But a person may not intentionally remain ignorant of a fact that is material and important to his conduct in order to escape the consequences of the criminal law. We refer to the notion of intentionally blinding yourself to what is staring you in the face as conscious avoidance.

An argument of conscious avoidance is not a substitute for proof of knowledge, it is simply another factor that you, the jury, may consider in deciding what the defendant knew. Thus, if you find beyond a reasonable doubt that the defendant was aware that there was a high probability that a fact was so, but the defendant deliberately avoided confirming this fact, such as purposely closing his eyes to it, or intentionally failing to investigate it, then you may treat this deliberate avoidance of positive knowledge as the equivalent of knowledge.

You must, in considering the conspiracy counts, also keep in mind that there's an important difference between intentionally participating in the conspiracy, on the one hand,

and knowing the specific object or objects of the conspiracy, on the other. You may consider conscious avoidance in deciding whether the defendant knew the object or objectives of the conspiracy; that is, whether he reasonably believed that there was a high probability that a goal of the conspiracy was to commit the crimes charged as the objects of that conspiracy and deliberately avoided confirming that fact by participated but participated in the conspiracy anyway. But conscious avoidance cannot be used as a substitute for finding that the defendant intentionally joined the conspiracy in the first place. It is logically, impossible for the defendant to intend and agree to join a conspiracy if he does not actually know it exists, and that is the distinction I'm drawing.

In sum, if you find that the defendant believed there was a high probability that a fact was so and that the defendant deliberately and consciously avoided learning the truth of that fact, you may find that the defendant acted knowingly with respect to that fact. However, if you find that the defendant actually believed that the fact was not so, then you may not find that he acted knowingly with respect to that fact. You must judge from all the circumstances and all of the proof whether the government did or did not satisfy its burden of proof beyond a reasonable doubt.

Now, in addition to dealing with the elements of each of the offenses, you must consider the issue of venue as to each offense; namely, whether any act in furtherance of the unlawful activity occurred within the Southern District of New York.

I defined for you the counties that are in the Southern District of New York, including Manhattan.

It is sufficient to satisfy the venue requirement if any act by anyone in furtherance of the crime charged occurred within the Southern District of New York. To satisfy this venue requirement only, the government need not meet the burden of proof beyond a reasonable doubt standard. It need not meet that standard on the venue requirement, and only on the venue requirement.

It meets its burden of proof if it establishes venue by a preponderance of the evidence, simply tips the scale in its favor, meaning that it's more likely than not that an act in furtherance of the crime occurred within the Southern District of New York.

That's what it means to prove it by the preponderance of the evidence.

The indictment in each count alleges various date ranges. It is sufficient if you find that the charged conduct you're considering occurred around the dates set in the indictment. It does not matter if a specific event or transaction is alleged to have occurred on or about a certain date, and the evidence indicates that in fact it occurred on another date. The law only requires that a substantial similarity between the dates alleged in the indictment and the dates established by the testimony and other evidence.

The statute of limitations, however, provides an exception to this general rule. The indictment alleges that the defendant agreed to commit various crimes beginning as early as 2009 and continuing to as late as 2001.

For Count One, which requires proof of an overt act, the government must prove beyond a reasonable doubt that an overt act in furtherance of the conspiracy occurred on or after September 21st, 2010. That's on or after September 21st, 2010.

I also explained that wire fraud conspiracy, as charged in Count Three, does not require an overt act. The defendant may be found guilty on Count Three only if you find beyond a reasonable doubt that the conspiracy to commit wire fraud extended beyond September 21st, 2010.

For the remaining counts, the defendant may be found guilty only if you find beyond a reasonable doubt that on or after September 21st, 2010, he engaged in conduct satisfying in whole or in part the essential elements of the count you are considering.

During the course of the trial, evidence was offered about a regulation of the Securities and Exchange Commission known as Regulation S. As a general rule, under the U.S. securities laws, a company that has not filed a registration statement for specific shares of stock with the Securities and Exchange Commission, the SEC, may not sell those shares of stock publicly in the United States. The law also requires certain exemptions -- it provides for certain exemptions to this general rule.

One such exemption is called Regulation S. Regulation S allows a company to sell unregistered shares of stock to persons who reside outside the United States. If the person who acquires those shares of stock resides outside the United States, that person can sell those shares outside the United States.

In order to be eligible for the sale in the United States, those shares must be held for a period of time from 40 days to one year and then become the subject of a registration statement or another exemption from the registration requirement provided by the United States securities laws. If those requirements were met, the shares would immediately become eligible for sale in the U.S. if the company filed a registration statement. Shares issued or sold pursuant to Regulation S may be held in a U.S.-based brokerage account and may serve as collateral for a margin loan in a U.S.-based brokerage account.

I gave you this instruction because it may help in your understanding of the evidence.

Stand up and stretch. The end is near, ladies and gentlemen. Very near.

(Pause)

(Continued on next page)

THE COURT: (Continued) In deliberating, ladies and gentlemen, the possible punishment of the defendant in the event of conviction is not a proper consideration for the jury and should not, in any way, enter into or influence your deliberations. The duty of imposing sentence belongs to the Court, the judge, and the judge alone. Your function is to weigh the evidence and to determine whether the defendant is guilty or is not guilty based upon the evidence or lack of evidence and the law.

Therefore, possible punishment should not factor into your deliberations.

Now, you are about to go into the jury room to begin your deliberations. I will allow the exhibits actually received into evidence to go with you into the jury room.

With regard to the recording, if you want to hear the recording, send us a note, we will have you back in the courtroom, and we can play it in the courtroom. It may be easier mechanically.

If you want any of the testimony read back, please send out a note specifying what you want to hear, and please be as specific as possible. If you want any further explanation of the laws as I have given it to you, you may also request that.

Your requests for testimony -- in fact, any communication with the Court -- should be made in writing, signed by your foreperson and given to the deputy marshal. In any event, do not tell me or anyone else how the jury stands on any issue -- in other words, what the vote is -- until you have reached a unanimous verdict.

I told you I am sending in a copy of the indictment and the indictment is merely an accusation, not proof of anything.

Some of you took notes during the trial. I want to emphasize to you that notes are simply an aid to memory. Notes that any of you may have made may not be given any greater weight or influence in the determination of the case than the recollections or impressions of other jurors, whether from notes or memory, with respect to the evidence presented or what conclusions, if any, should be drawn from such evidence. Any difference between a juror's recollection and another juror's notes should be settled by asking to have the court reporter read back the testimony. Because it is the court record rather than any juror's note on which your verdict must be based.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement. Each of you must decide the case for himself or herself, but you should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is wrong. Your verdict must be unanimous, but you are not bound to surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict solely because of the opinions of other jurors. Discuss and weigh your respective opinions dispassionately, without regard to sympathy, without regard to prejudice or favor for either party, and adopt that conclusion that in your good conscience appears to be in accordance with the evidence and the law.

Remember, you are not partisans. You are judges -- judges of the facts -- not representatives of a constituency or a cause.

Again, each of you must make your own decision about the proper outcome of this case based on your consideration of the evidence and your discussions with your fellow jurors. No juror should surrender his or her conscientious beliefs solely for the purpose of returning a unanimous verdict. If at any point you find yourselves divided, do not inform the Court of what the vote is, but you can send such a note. Once you have reached a verdict, do not announce what that verdict is until I ask you to do so in the courtroom.

Once you get into the jury room, you may select a foreperson who will be responsible for signing all communications to the court on behalf of the jury and for handing them to the deputy marshal during your deliberations. This should not be understood to mean that an individual cannot send the Court a note should the foreperson refuse to do so.

As I told you, I am going to give you the typed text of these instructions. If there is any variance between the words that I spoke and the typed text, it is the words that I spoke that control.

After you have reached a verdict, your foreperson will advise the deputy marshal outside your door that you have reached a verdict.

I will stress that each of you must be in agreement with the verdict that is announced in court. Once your verdict is announced by your foreperson in open court and officially recorded, it cannot ordinarily be revoked.

Your function now is to weigh the evidence in this case and to determine whether the government has or has not proven the guilt of the defendant, Gary Hirst, with respect to each of the four counts in the indictment.

You must base your verdict solely on the evidence or lack of evidence in this case and these instructions as to the law, and you are obliged under your oath as jurors to follow the law as I have instructed you, whether you agree or disagree with the particular law in question. I am sure that if you listen to the views of your fellow jurors and if you apply your own common sense you will reach a verdict in accordance with the evidence and the law.

Finally, let me state that your oath sums up your duty and that is: Without fear or favor to anyone you will well and truly try the issues, based solely upon the evidence and this Court's instructions as to the law.

That concludes my instructions. Please stand up and stretch while I meet with the attorneys at sidebar for a moment.

(At the sidebar)

THE COURT: Anything?

MR. BLAIS: We have one comment. On page 66, with respect to the statute of limitations. You read, "The indictment alleges that the defendant agreed to commit various crimes beginning as early as 2009 and continuing to as late as 2001," is what you said. And it should be 2011.

THE COURT: Page, please.

MR. BLAIS: 66.

(In open court)

THE COURT: Have a seat, ladies and gentlemen.

MR. BLAIS: It's the last full paragraph on the page.

THE COURT: Let me correct something I said. I may have given you a wrong date in describing what the indictment alleges.

The indictment alleges that the defendant agreed to commit various crimes beginning as early as 2009 and continuing to as late as 2011.

(At the sidebar)

MR. BLAIS: That's it for the government.

THE COURT: Anything from the defendant?

MS. HARRIS: We simply renew our objections to the conscious avoidance charge, especially in light of the government's closings, since there was no argument or theory based on ignorance of red flags or failure to investigate. We don't think a factual predicate has been set for that instruction.

We also just noted an objection to what we believe to be a disproportionate weight given to circumstantial evidence in the course of instruction. In particular, on page 56, "direct proof of knowledge, willfulness, and fraudulent intent is almost never available." Combined with our previous objections to the reasonable doubt and some of the circumstantial evidence instructions, we believe that overall it gives disproportional weight to circumstantial evidence.

I don't think we have any further issues on the charge. One second, your Honor.

Your Honor, we also, I think in our original proposed charges, had proposed cooperating witnesses as opposed to accomplice witness, especially here on this record where the two cooperating witnesses were not really connected to Mr. Hirst at all. We would object to the use of accomplice throughout that section.

THE COURT: Hamels was an accomplice witness, and Hallac was just a cooperating witness. Do you want me to repeat that again? I can say that.

MS. HARRIS: Obviously, we take a different view as to the scope of the conspiracy. So that's where the source of our objection lies.

MR. TREMONTE: We should also preserve an objection to the government's argument in closing that the metadata was intentionally manipulated by Mr. Hirst. We don't believe there is a factual predicate for that argument.

THE COURT: Anything else?

MS. MERMELSTEIN: No, your Honor.

THE COURT: All right.

I am going to excuse Glen Garnes. He was originally Juror No. 48, and he is the 14th juror. I am going to tell him that he is still on jury duty and give him the standard instructions that he may be called back.

Any objection?

MR. BLAIS: No objection.

MS. HARRIS: No objection.

(In open court)

THE COURT: Mr. Garnes, you're not finished with your jury duty, but you're going to be in a different status. So you may return to your daily life, but you may not discuss the case with anyone. You must continue to avoid reading or researching or learning anything about the case.

My promise to you is that when this jury is discharged, we will telephone you and let you know what happened and let you know that you are now relieved of that responsibility. But it can happen, and has happened on occasion, that a juror could be called back into service, at which point I would ask you, have you discussed this case with anyone, have you read anything, and you may be called upon to continue to serve on this case.

But with the thanks of the Court, you are excused and you may now go to the jury room and collect your belongings and take off.

(Alternate juror exits courtroom)

THE COURT: Mr. Marshal, if you will step forward.

First of all, has defense counsel seen the revised verdict sheet, which we have just marked as Court Exhibit 11.

MR. TREMONTE: We have, your Honor.

THE COURT: Any objection?

MR. TREMONTE: No objection.

THE COURT: Let me tell you, ladies and gentlemen, I am going to give you 12 copies of the verdict sheet, but only one copy is signed by your foreperson and returned, but you might like to have multiple copies in the jury room. I am giving you one copy of the jury instructions and one copy of the indictment so you have it in there.

You may proceed, Madam Deputy.

(Marshal sworn)

THE COURT: Now, ladies and gentlemen, you may discuss the case among yourselves. It's been an extraordinarily long day and you have been very patient. So it's absolutely appropriate if it's your wish and desire that you leave right now and you pick up tomorrow morning at 10:00.

Now, what I am going to instruct you is that you do not start talking about the case until all 12 jurors are present. You can talk about the weather or anything else until the 12th juror arrives. Then you can talk about the case, discuss it among yourselves.

I again just thank you for bearing with me, especially today. I know it was a long day. Have a very pleasant evening, ladies and gentlemen.

(Jury exits courtroom)

THE COURT: I think Ms. Hector probably remembers this, but I follow something I call the eight-minute rule, which is you have to be able to return to the courtroom within eight minutes of getting a call that there is a note. It is my experience that jurors are unhappy when there is an extended delay.

Unless there is an objection, I will have counsel review the note as soon as they arrive in the courtroom, and they can begin working on the answer to the question, and then I will come down and we will talk about the answer.

Do we have the exhibits?

MS. MERMELSTEIN: The government's exhibits are ready to go in the trial cart. Defense counsel has reviewed the government exhibit list and confirmed that those are the exhibits in evidence, but they haven't yet reviewed the actual physical exhibits, which they are welcome to do. We similarly would like to review their exhibits, but have reviewed their list. And we have an exhibit list of government exhibits to provide to the jury with the exhibits.

THE COURT: Get it done by 10 to 10 tomorrow morning and notify my deputy. I assume, if there is an agreement, there is no objection in my deputy then providing the cart to the deputy marshal to go into the jury room.

MR. TREMONTE: No objection.

MS. MERMELSTEIN: No objection, your Honor.

THE COURT: All right. That sounds fine.

Have a pleasant evening.

Yes, sir.

MR. TREMONTE: I want to apologize for this morning. I didn't mean to cause the Court any delay. I apologize to the Court, to the staff, to the court reporter and to the government. And I want to point out that all of my colleagues were ready to go actually outside of the office on the curb. The fault is entirely mine. I was dragging my feet this morning, and I will make sure not to have it happen again.

THE COURT: I appreciate that, Mr. Tremonte. That's always the right thing to do. As I have said before, we are all subject to the human condition. So thank you, but thank you for your comments.

Have a pleasant evening.

(Adjourned to September 27, 2016, at 10:0 a.m.)